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No. 97-____

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1997

IN RE: BRAND NAME PRESCRIPTION DRUGS ANTITRUST LITIGATION,

ABBOTT LABORATORIES, et al.,

Petitioners,

—v.—

HJB, INC., et al.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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39 pp

QUESTION PRESENTED

Whether a new exception to the "indirect-purchaser" rule of *Hanover Shoe, Inc. v. United Shoe Machinery Corp.*, 392 U.S. 481 (1968), *Illinois Brick Co. v. Illinois*, 431 U.S. 720 (1977) and *Kansas v. Utilicorp United, Inc.*, 497 U.S. 199 (1990), should be recognized, permitting indirect-purchasing retailers to recover overcharge damages against manufacturers alleged to have conspired in violation of section 1 of the Sherman Act, where:

(1) the alleged overcharge was first borne by direct-purchasing wholesalers;

(2) according to the Seventh Circuit, the direct-purchasing wholesalers may themselves sue to recover the entire amount of the overcharge (even though there is said to be evidence of their role as "reluctant accomplices" in the conspiracy);

(3) the manufacturers have given substantial consideration to the wholesalers for a release of any antitrust overcharge damage claims;

(4) there is no allegation that wholesaler markups were collusively set; and

(5) permitting indirect-purchasing retailers' damages claims would result in double recovery and would require determining how much of the alleged overcharge the wholesalers passed on to them?

PARTIES TO THE PROCEEDING

A list of the parties to the consolidated appeal in the Court of Appeals is set forth in Appendix K at 134a.

RULE 29.6 STATEMENT

Pursuant to Sup. Ct. R. 29.6, the following are Petitioners' parent and nonwholly owned subsidiary companies:

(1) Abbott Laboratories has no parent company. The nonwholly owned subsidiaries of Abbott Laboratories are TAP Holdings, Inc. and TAP Pharmaceuticals, Inc.;

(2) The pharmaceutical business and assets of Petitioner Ciba-Geigy Corporation have been merged with Petitioner Sandoz Pharmaceuticals Corporation and have been renamed Novartis Pharmaceuticals Corporation. The parent corporations of Novartis Pharmaceuticals Corporation are Novartis Finance Corporation, Novartis Corporation and Novartis AG. The nonwholly owned subsidiaries are Novartis Biotech Partnership, Inc. and Chiron Corporation;

(3) Forest Laboratories Inc. has no parent or nonwholly owned subsidiary companies;

(4) The parent corporation of G.D. Searle is Monsanto Company. G.D. Searle has no nonwholly owned subsidiaries;

(5) The parent corporations of Hoechst Marion Roussel, Inc. (formerly Marion Merrell Dow Inc.) are Hoechst AG, Hoechst Marion Roussel AG, HMR Pharma, Inc. and Hoechst Marion Roussel S.A. The nonwholly owned subsidiaries of Hoechst Marion Roussel, Inc. are Hoechst Marion Roussel Canada, Inc., Carderm Capital L.P., Marion Merrell et Cie (SNC), Marion Merrell Bourgoin S.A., Hoechst Marion Roussel S.p.A., Biosearch Italia S.p.A., Gruppo Lepetit S.p.A., Hoechst Marion Roussel S.A. (Belgium), Hoechst Marion Roussel S.A. (Spain), Marion Merrell S.A. (Spain) and Marion Merrell S.A. (France);

(6) Johnson & Johnson has no parent or nonwholly owned subsidiary companies;

(7) The parent corporation of Rhone-Poulenc Rorer Pharmaceuticals, Inc. is Rhone Poulenc S.A. Rhone-Poulenc Rorer Pharmaceuticals has no nonwholly owned subsidiaries;

(8) The parent corporation of Pharmacia & Upjohn Company (formerly The Upjohn Company) is Pharmacia & Upjohn, Inc. The nonwholly owned subsidiaries of Pharmacia & Upjohn Company are Upjohn Suzhou Animal Health Products Company Limited (China), Upjohn Suzhou Pharmaceutical Company Limited (China), SinoSwed Pharmaceutical Corp. (China), Pharmacia Limited (China), Pharmacia (China) Biotech Limited, Pharmacia (Hong Kong) Biotech Limited, P.T. Pharmacia & Upjohn Indonesia, Nuova ICC-Upjohn SpA (Italy), Korea Upjohn Limited, Pharmacia & Upjohn Allergon AB (Sweden), PharmaFrac AB (Sweden), Pharmacia & Upjohn, Inc., Yusafarm d.o.o. (Fed. Rep. Of Yugoslavia).

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No. 97-__

In The

Supreme Court of the United States
October Term, 1997

IN RE: BRAND NAME PRESCRIPTION DRUGS ANTITRUST LITIGATION

ABBOTT LABORATORIES, et al.,

Petitioners,

—v.—

HJB, INC., et al.,

Respondents.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Seventh Circuit

PETITION FOR A WRIT OF CERTIORARI

Petitioners Abbott Laboratories, et al.[1] respectfully pray that this Court issue a Writ of Certiorari to review the August 15, 1997 judgment and opinion of the United States Court of Appeals for the Seventh Circuit in this matter.

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[1] The undersigned Petitioners are the manufacturer defendants that continue to litigate actively in the consolidated Sherman Act section 1 class action proceeding, currently pending in the district court; the other manufacturer defendants in the class action have settled their claims with class plaintiffs.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Seventh Circuit is reported at 123 F.3d 599, and is reproduced in Appendix ("App.") A at 1a-29a. The order of the Court of Appeals denying rehearing and rehearing en banc is not reported, and is reproduced in App. I at 131a-132a. The opinion of the United States District Court for the Northern District of Illinois is reported at 1996 WL 167350, and is reproduced in App. E at 45a-101a.

STATEMENT OF JURISDICTION

The judgment of the Court of Appeals was entered on August 15, 1997. Petitioners' timely petition for rehearing and suggestion for rehearing en banc was denied by the Court of Appeals on October 8, 1997. The jurisdiction of this Court to review the judgment of the Court of Appeals by Writ of Certiorari is conferred by 28 U.S.C. § 1254 (1).

STATUTES INVOLVED

This case involves Sherman Act section 1, 15 U.S.C. § 1, which is set forth in App. J at 133a.

STATEMENT OF THE CASE

A. Introduction

In *Illinois Brick Co. v. Illinois,* 431 U.S. 720 (1977), this Court established the rule that, in cases brought under section 1 of the Sherman Act, 15 U.S.C. § 1, only direct purchasers of the products subject to an illegal overcharge are permitted to sue for damages; remote purchasers are prohibited from doing so. This "indirect-purchaser" rule is based on this Court's desire (1) to spare courts the difficult (if not impossible) task of attempting to apportion overcharge damages among multiple tiers of distribution in complex antitrust cases; (2) to encourage private enforcement of the antitrust laws by concentrating the full recovery for the overcharge in direct purchasers; and (3) to prevent multiple recovery of damages against antitrust defendants. 431 U.S. at 733-48. In reaching its decision, the Court built on its reasoning in *Hanover Shoe, Inc. v. United Machinery Corp.,* 392 U.S. 481

(1968), which prohibited antitrust defendants from using a pass-on defense against direct-purchasing plaintiffs.

The Court strongly reinforced its commitment to the indirect-purchaser rule in *Kansas v. Utilicorp United, Inc.*, 497 U.S. 199 (1990), where the Court held that, although "[t]he rationales underlying *Hanover Shoe* and *Illinois Brick* will not apply with equal force in all cases," the "possibility of allowing an exception, even in rather meritorious circumstances, would undermine the rule." 497 U.S. at 216. Therefore, the Court warned, it is "unwarranted and counterproductive" to "litigate a series of exceptions" to the rule, even where "any [of the] economic assumptions underlying the *Illinois Brick* rule might be disproved in a specific case." *Id.* at 217.

Notwithstanding *Illinois Brick* and *Utilicorp*, the Seventh Circuit in this case created a new exception to the *Illinois Brick* indirect-purchaser rule and permitted indirect-purchasing retail drugstores to sue for damages, despite its own findings that (1) the alleged overcharge on branded prescription drugs occurred at the manufacturer level (and there was no allegation of collusion with respect to the wholesalers' markups); (2) the alleged overcharge was borne in the first instance by the direct-purchasing wholesalers; (3) the wholesalers are entitled to sue the manufacturers for overcharge damages (even though the evidence depicts them, at worst, as "reluctant" participants in the manufacturers' conspiracy); (4) the manufacturers "settled" with the wholesalers; and (5) calculating indirect-purchaser damages would require the type of "pass-on" analysis that *Illinois Brick* forbids. These findings should have led the Seventh Circuit to bar the indirect-purchasing drugstores' claims under *Illinois Brick* and *Utilicorp*.

The Seventh Circuit also reasoned that the viability of the indirect-purchasing retailers' damages claims *depends* on whether or not the manufacturers settle with the wholesalers: if no settlement is reached, the retailer claims are barred (and only the direct-purchasing wholesalers have the right to seek damages); if a settlement is reached, then the indirect-purchasing retailer claims are somehow activated.

The Seventh Circuit's opinion constitutes a radical departure from the principles established by this Court in *Hanover Shoe*, *Illinois Brick* and *Utilicorp*. If allowed to stand, it would permit both direct and indirect purchasers to recover damages, thereby sanctioning duplicative recovery of damages, and it would risk opening the floodgates to indirect purchaser litigation involving just the types of difficulties and uncertainties that this Court consistently has sought to avoid.

B. Factual Background

1. The Nature of Branded Drugs and the Impact of Managed Care on Branded Drug Pricing

Petitioners are manufacturers of brand name prescription drugs (or "branded drugs").[2] Respondents are retail pharmacies, both independents and large chains, which sell branded drugs in the United States.[3] Approximately 80 to 90% of Respondents' aggregate purchases of branded drugs are from wholesalers, not directly from manufacturers. *In re Brand Name Prescription Drugs Antitrust Litig.*, No. 94 C 897, 1996 WL 267752, at *3 (N.D. Ill. May 17, 1996) (App. 39a); (Doc. 3 at ¶ 73(e)).[4]

Branded drugs are unlike most other consumer goods. Although the patient is the ultimate consumer, neither the patient nor the pharmacist is permitted by law to select the chemical entity

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[2] As defined by Respondents, a brand name prescription drug is a drug that is sold under a brand name rather than its generic or chemical name. *In re Brand Name Prescription Drugs Antitrust Litig.*, No. 94 C 897, 1996 WL 167350, at *32 n.3 (N.D. Ill. Apr. 4, 1996) (App. 46a).

[3] In 1994, the Judicial Panel for Multidistrict Litigation transferred over 100 actions by retail pharmacies to the United States District Court for the Northern District of Illinois for coordinated or consolidated proceedings. The district court certified a nationwide class of retail pharmacy plaintiffs, which alleges violations of section 1 of the Sherman Act, 15 U.S.C. § 1. Other retailers chose to opt out of the class, and are pursuing Sherman Act claims and price discrimination claims under the Robinson-Patman Act, 15 U.S.C. §§ 13 (a), (d) and (f); Robinson-Patman Act claims are not the subject of this petition.

[4] Throughout this Petition, citations to cases are to the official or on-line reporter, and then to the corresponding page(s) in the Appendix. Citations in the form "Doc. __" are to documents included in the record on appeal.

to be dispensed; only the physician does that. 1996 WL 167350, at *13 (App. 68a); (Doc. 2047 at ¶ 62). Thus, the retail druggist typically has served as a passive dispenser of branded drugs selected by physicians.

This traditional model of drug selection by doctors and distribution by retail druggists, as well as the delivery of healthcare generally, has changed dramatically with the growth of managed care. (Doc. 2047 at ¶¶ 21, 23; Doc. 2048 at ¶¶ 35-49, 52-61.) Managed-care organizations typically contract with employers to provide healthcare services to covered employees in return for premiums from the employer (often supplemented by employee contributions). (Doc. 2047 at ¶¶ 8-9; Doc. 2048 at ¶ 35.) In order to maximize their profitability, managed-care organizations seek to ratchet down the cost of healthcare goods and services. One way they often do so is by requiring doctors, hospitals, pharmacies and others to grant price concessions in return for the privilege of servicing the patients they control. (Doc. 2047 at ¶¶ 23-24; Doc. 2048 at ¶¶ 52-61, 80.) Doctors, hospitals and even retail pharmacies charge less for their services to managed-care patients than to other patients. (Doc. 2047 at ¶¶ 30, 32-34; Doc. 2048 at ¶¶ 52-53, 55-61, 74.)[5] Thus, the retail pharmacies themselves engage in the very same type of differential pricing that they challenge in this case.

Managed-care organizations also have extracted price concessions from pharmaceutical manufacturers. (Doc. 2047 at ¶ 34; Doc. 2430 at 14.) As the district court found, "substantial evidence" showed that managed-care organizations "possess considerable influence over the prescribing decision." (Doc. 2430 at 14.) This power derives from the ability of managed-care

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[5] This Court and a number of the circuit courts have recognized the ability of managed-care organizations to obtain lower prices from retail drug stores. *See, e.g., Group Life & Health Ins. Co. v. Royal Drug Co.*, 440 U.S. 205, 227-28 (1979); *see also Medical Arts Pharmacy, Inc. v. Blue Cross & Blue Shield, Inc.*, 675 F.2d 502, 503-07 (2d Cir. 1982); *Sausalito Pharmacy, Inc. v. Blue Shield*, 544 F. Supp. 230, 232 (N.D. Cal. 1981), *aff'd*, 677 F.2d 47 (9th Cir.), *cert. denied*, 459 U.S. 1016 (1982).

organizations to regulate access to patients. Managed-care organizations thus are able to set up bidding situations between manufacturers of therapeutically similar branded products, inter alia, by using lists of preferred products (called formularies) to favor the most cost-effective product with its patients. (Doc. 2047 at ¶¶ 36-37, 39-42, 44, 48-49, 51, 52.) The district court recognized that a manufacturer's decision to discount to managed-care entities "is often a response to competitive pressures and reflects the epitome of a competitive system." *In re Brand Name Prescription Drugs Antitrust Litig.*, No. 94 C 897, MDL 997, 1996 WL 167347, at *6 (N.D. Ill. Apr. 4, 1996) (opinion regarding proposed settlement).

In contrast, the manufacturers believed that retailers simply did not have the same leverage over doctors that managed-care organizations possessed. As the district court observed, the manufacturers presented evidence that "no retailer has noticeably reduced its sales following a manufacturer's refusal to offer a discount," whereas many managed-care plans had done so. 1996 WL 167350, at *13 (App. 68a).

The price concessions that managed-care organizations negotiate are delivered by the manufacturers in at least two different ways. *Id.* at *21 (App. 82a-83a); (Doc. 2017A at ¶¶ 15-16). The first is through "chargebacks." Under a chargeback arrangement, the wholesaler honors the discount separately negotiated between the manufacturer and the managed-care organization, and sells to the managed-care organization at the discounted price *plus* the wholesaler's separately negotiated markup. 1996 WL 167350, at *21 (App. 82a). The manufacturer has no involvement in the negotiation of the markup between the wholesaler and the managed-care organization. *Id.* The manufacturer subsequently makes the wholesaler whole for the amount of the discount.[6] The second method of delivering price

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[6] The Seventh Circuit was careful to note that price differentiation does not necessarily indicate collusion. *In re Brand Name Prescription Drugs Antitrust Litig.*, 123 F.3d 599, 603 (7th Cir. 1997) (App. 3a–4a). Thus, in a multi-price system in which some consumers "are less able to resist high prices

concessions is through rebates, which manufacturers provide directly to managed-care organizations, thereby bypassing the wholesaler altogether. *Id.* at *21 (App. 82a).

2. The Role of Wholesalers in the Distribution of Branded Drugs

Pharmacies derive significant benefits by purchasing from wholesalers. For example, they are able to deal with one or a few local suppliers instead of many manufacturers, and they can place smaller orders with wholesalers at a lower cash outlay. (Doc. 2017A at ¶¶ 7-9.)

As the district court found, each wholesaler's markup on branded drugs "[is] determined by the [wholesaler's] customer and wholesaler *without participation by any manufacturer*." 1996 WL 167350, at *21 (App. 82a) (emphasis added). Respondents did not claim that wholesalers' markups on their branded-drug sales to retailers were uniform or collusive.

3. The Alleged Conspiracy

Respondents posit a conspiracy among the manufacturers to impose an overcharge on the prices paid by wholesalers for branded drugs eventually sold to Respondents, and to charge lower, discounted prices to managed-care organizations. 1996 WL 167350, *1, *32 n.7 (App. 46a-47a, 48a n.7). The overcharge is alleged to have originated at the manufacturer level. As the Seventh Circuit confirmed: "The plaintiffs' complaint is that they were overcharged because the wholesalers passed on to them the overcharge that the wholesalers had to pay the manufacturers by virtue of the price-fixing conspiracy." 123 F.3d at 606 (App. 8a).

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than others," and where sellers each have "some monopoly power [patents, etc.] [allowing them to] price discriminate unilaterally" — precisely the economic environment that Petitioners argue exists in the branded pharmaceutical market — the use of chargebacks would be economically sound. 123 F.3d at 603 (App. 4a); *see also Ball Mem'l Hosp., Inc. v. Mutual Hosp. Ins., Inc.*, 784 F.2d 1325, 1340 (7th Cir. 1986) (competition "often works through 'discriminatory' chiseling down of prices").

As to the direct-purchasing wholesalers, Respondents allege that they joined the conspiracy by agreeing to employ chargebacks in order to shore up the manufacturers' collusive price differentiation, which in turn helped keep prices higher than they otherwise might have been. *See id.* at 614 (App. 25a). And, as noted, there is no allegation of collusion (vertical or horizontal) with regard to the wholesalers' markup.

The manufacturers vigorously deny Respondents' allegations and contend that (1) their behavior was not uniform, (2) pricing decisions were motivated by each company's independent assessment of the ability of managed-care organizations and retail drugstores to influence sales of its products, and (3) retail drugstores did receive discounts on branded drugs from various manufacturers in certain instances where the manufacturer believed that retailers might have some ability to influence prescription writing for the product in question.[7]

C. Proceedings Below

1. The Opinion of the District Court

In November 1995, the manufacturers and wholesalers filed separate motions for summary judgment. The manufacturers also filed a separate motion for summary judgment dismissing Respondents' "indirect-purchaser" claims under *Illinois Brick*. The district court ruled on all of these motions in an opinion dated April 4, 1996. 1996 WL 167350, at *1 (App. 45a).

a. The District Court Granted the Wholesalers' Summary Judgment Motion, Finding That There Was No Evidence That the Wholesalers Participated in Any Conspiracy

The district court found no evidence of a conspiracy involving the wholesalers. *Id.* at *20 (App. 80a). The court found

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[7] Petitioners nevertheless assume for purposes of this Petition the existence of the conspiracy alleged by Respondents.

that wholesalers set their prices independently, "without participation by any manufacturer," *Id.* at *21 (App. 82a), and that "in the entirety of this massive record" there is no evidence that the wholesalers had anything to do with manufacturer discounting decisions. *Id.* at *20 (App. 80a). The court rejected plaintiffs' contention that participation in chargeback transactions was evidence of wholesaler participation in the alleged conspiracy. *Id.* at *21-*24 (App. 82a-87a).

b. The District Court Denied the Manufacturers' Summary Judgment Motions on the Conspiracy Issue

In considering the manufacturers' summary judgment motions, the court found that "[plaintiffs failed] to come forward with significant direct evidence of a conspiracy." *Id.* at *6 (App. 55a). Nevertheless, the court denied the manufacturers' motions, focusing on what it characterized as the "striking" similarities in the manufacturers' discounting practices,[8] purported evidence of "mutual awareness [among the manufacturers] of each others' policies," the "creation and maintenance of the chargeback system," and opportunities to conspire (e.g., industry seminars, trade association meetings, and third-party data collection services). *See id.* at *6, *8, *10-*11 (App. 56a, 59a, 63a-64a).

Notwithstanding evidence that each manufacturer plausibly believed that retailers could not sufficiently influence the prescribing of most or all of its branded drugs to warrant discounts, the court effectively denied summary judgment because it found an issue of fact regarding whether retailers did have some ability to influence the prescribing of branded drugs. *Id.* at *15 (App. 71a).

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[8] The district court at several points accepted Respondents' assertion that, in effect, manufacturers uniformly declined to give price concessions to retailers. 1996 WL 167350, at *7-*8, *15 (App. 58a-59a, 72a). Nonetheless, the court also recognized that at least eighteen of the manufacturers had offered discount programs on branded drugs to retail drug stores. *Id.* at *17, *32 n.20 (App. 75a).

c. The District Court Held That the "Owned or Controlled" Exception to *Illinois Brick* Applied in This Case

Despite holding that the wholesalers were not members of any alleged conspiracy, the district court nevertheless decided that *Illinois Brick* did not preclude recovery by Respondents in this case.

The court relied on the "owned or controlled" exception set forth in footnote 16 of the *Illinois Brick* opinion. The court applied the exception because, in its view, the manufacturers exercised a "degree of control" over the wholesalers in the distribution process that "effectively transforms the transaction — from defendant to middleman to indirect purchaser — into one sale." *Id.* at *29 (App. 95a); *see also id.* at *29-*32 (App. 96a-100a). Specifically, the district court found that manufacturers decided which of the wholesalers' customers would receive manufacturers' discounts and negotiated those discounts directly with those managed-care customers. *Id.* at *30 (App. 96a-97a). With respect to those customers, the court concluded that the "relationship unifies into one sale." *Id.* at *31 (App. 99a). As to retailers, the court wrote that a wholesaler's markup over its acquisition cost is "a relatively modest portion of the total cost of the drugs to the purchaser" and that wholesalers "were not in a financial position" to reduce their prices to retailers without some reduction in manufacturers' selling prices to wholesalers. *Id.* at *30-*31 (App. 98a). On this basis, the court found that manufacturers had "control" over wholesaler's sales to retailers as well. *Id.* at *30-*32 (App. 98a-100a).

On May 16, 1996, the district court certified for interlocutory appeal, under 28 U.S.C. § 1292 (b), the question of the applicability of the *Illinois Brick* "owned or controlled" exception to the facts of this case. 1996 WL 267752 (App. 35a). On May 16, 1996, the district court also entered a judgment in favor of the wholesalers under Rule 54 (b) of the Federal Rules of Civil Procedure. *Id.* The manufacturers moved the Seventh Circuit to hear the appeal on the "owned or controlled" issue. This motion was granted on July 8, 1996. (App. 33a-34a). Class

plaintiffs meanwhile filed a notice of appeal with respect to the judgment exonerating the wholesalers. These appeals, as well as certain others, were consolidated by the Seventh Circuit by order dated May 9, 1997. (App. 30a-32a.)

2. The Opinion of the Court of Appeals

The Seventh Circuit issued its opinion on August 15, 1997. 123 F.3d 599 (App. 1a-29a).

As an initial matter, the Seventh Circuit reversed the grant of summary judgment in favor of the wholesalers, believing that there was enough evidence to create a jury issue as to whether the wholesalers were the manufacturers' "cats–paws," that is, "reluctant accomplices," acting as "agents of [the] manufacturers' cartel." *Id.* at 615 (App. 25a-26a).[9]

On the *Illinois Brick* issue, the Seventh Circuit reversed the district court with respect to the "owned or controlled" exception, holding that there is no evidence that any of the manufacturers either own or control any of the wholesalers. *Id.* at 605-06 (App. 7a-8a).

But the Seventh Circuit did not end its *Illinois Brick* analysis there. Despite the fact that it had ordered the parties to limit briefing to the applicability of *Illinois Brick* where the direct purchasers "are separate companies neither owned by any manufacturer nor co-conspirators of any manufacturer," (App. 31a), the court nevertheless went on to consider the impact under *Illinois Brick* of a finding of wholesaler involvement in the alleged collusion.

In this connection, the Seventh Circuit made a number of findings relevant to the *Illinois Brick* issue:

(1) Respondents' "complaint is that they were overcharged because the wholesalers passed on to them the

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[9] The Seventh Circuit's ruling on the wholesaler judgment is the subject of a separate petition for a Writ of Certiorari by the wholesalers.

overcharge that the wholesalers had to pay the manufacturers by virtue of the price-fixing conspiracy," 123 F.3d at 606 (App. 8a);

(2) Respondents' "pass-on" claim "is just the kind of complaint that *Illinois Brick* bars," *id.*; and

(3) the direct-purchasing wholesalers are "entitled" to sue for damages, despite their participation in the posited collusion. *Id.* at 615 (App. 27a).[10]

Reinforcing these points, the Seventh Circuit also reiterated the core holding of *Illinois Brick* and its application to this case:

> The only entities permitted to complain about the manufacturers' overcharging the wholesalers are the wholesalers themselves, the direct purchasers, even if every cent of the overcharge was promptly and fully passed on to the pharmacies in the form of a higher wholesale price.

Id. at 606 (App. 8a-9a).

The court later stated, however, that "if the plaintiffs went on to obtain a judgment against the wholesalers and manufacturers, any indirect-purchaser defense would go by the board, since the pharmacies would then be direct purchasers from the conspirators." *Id.* at 604 (App. 6a). Although the court's reasoning is difficult to follow, the Seventh Circuit attached significance in this connection to the fact that the wholesalers, in return for substantial consideration, had released their claims against the manufacturers:

> Some wholesalers were plaintiffs in this litigation; they settled. Had they not done so, and had the case proceeded to trial and the pharmacies been permitted to seek damages for the amount of the overcharge passed on to

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[10] Here, the Seventh Circuit apparently relied upon the holding of this Court in *Perma Life Mufflers, Inc. v. International Parts Corp.*, 392 U.S. 134 (1968), which held that an antitrust conspirator may sue upstream coconspirators, at least where it had a subordinate role in the challenged activity.

> them, the court would have had to apportion the overcharge between the wholesalers and the pharmacies. That's just what the Supreme Court in *Hanover Shoe*, *Illinois Brick*, and *Utilicorp* told the federal courts not to do.

Id. at 606 (App. 9a).[11]

Thus, under the Seventh Circuit's rationale, the viability of Respondents' damage claims appears to depend on whether or not the manufacturers settle with the wholesalers: If there is no settlement, Respondents' claims are barred (and the wholesalers have the right to seek damages, despite being "cats–paws"). If a settlement is reached, however, then Respondents' claims somehow are activated.

The Seventh Circuit did not explain how the wholesalers' release of the manufacturers might bear on the problem of "[t]racing a price hike through successive resales" from manufacturer to wholesaler to retailer — a question it characterized as "famously difficult." *Id.* at 605 (App. 7a). Likewise unexplained was how permitting indirect-purchaser suits as soon as the direct purchasers have released their claims squares with the prohibition against duplicative recovery under Clayton Act section 4 or with the policy of providing direct purchasers an incentive to sue for illegal overcharges.

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[11] Although the Seventh Circuit appeared to believe otherwise, the wholesalers have never been plaintiffs in this litigation. Seven wholesalers originally were sued by the class plaintiffs, and they continue to be defendants to this day. (Doc. 3 at ¶¶ 52-58.) Recognizing their *Illinois Brick* problem, plaintiffs originally attempted to secure (in return for a dismissal from the lawsuit) an assignment from the wholesalers of their claims against the manufacturers. Instead, for substantial consideration, the wholesalers entered into a judgment sharing agreement with the manufacturers in which, inter alia, the wholesalers released antitrust claims against the manufacturers. *In re Brand Name Prescription Drugs Antitrust Litig.*, Nos. 94 C 897, MDL 997, 1995 WL 221853, at *1, *4 n.2 (N.D. Ill. Apr. 11, 1995) (App. 103a-104a, 106a n.2). Thus, the Seventh Circuit is correct that at least the claims of the seven wholesalers in this case have been "settled."

REASONS FOR GRANTING THE WRIT

The Seventh Circuit's ruling is a frontal challenge to the indirect-purchaser doctrine set forth in *Hanover Shoe, Illinois Brick* and *Utilicorp*. There is no authority supporting the new "exception" that the Seventh Circuit has created. Indeed, in ruling that both direct and indirect purchasers may sue to recover the same overcharge, the Seventh Circuit's decision conflicts with every other court which has considered the question. Moreover, the court's decision (1) will require the district court to conduct an incidence (pass-on) analysis — something this Court has repeatedly forbidden the federal courts to undertake — to determine how much, if any, of the alleged overcharge has been passed on from wholesalers to the indirect-purchasing retailers; (2) guts this Court's policy of encouraging direct purchasers to sue for overcharges they passed on to others because, according to the Seventh Circuit's analysis, the moment that such direct purchasers settle with conspiring manufacturers, they make themselves subject to suit as alleged coconspirators by the indirect purchasers; (3) permits multiple levels of purchasers to sue for overcharge damages (in conflict with the holdings of this Court and decisions in other Circuits) thereby making duplicative recovery almost inevitable; and (4) renders the rights of indirect-purchasing plaintiffs dependent on whether or not settlement agreements have been reached among putative coconspirators.

This is probably the largest antitrust case in history, a case in which Respondents seek damages of many billions of dollars, and one with significant implications for the role of managed care in the nation's health-care system. But the main reason why the petition should be granted is that the Seventh Circuit's ruling threatens to open a gaping hole in the *Illinois Brick* doctrine, as class action plaintiffs discover that the policies underlying *Hanover Shoe*, *Illinois Brick* and *Utilicorp* go out the window as soon as direct purchasers are alleged to be "part of the conspiracy."

I. THE SEVENTH CIRCUIT'S OPINION CREATES A NEW EXCEPTION TO THE INDIRECT-PURCHASER RULE OF *HANOVER SHOE*, *ILLINOIS BRICK* AND *UTILICORP*

In *Hanover Shoe*, this Court ruled that direct purchasers are entitled to recover the entire amount of an overcharge in a Sherman Act suit even if all or a portion of that overcharge was passed on to their customers. This Court's rejection of a so-called "pass-on" defense was based on the desire to avoid needlessly complicating antitrust enforcement by requiring an apportionment of damages among different tiers of purchasers. 392 U.S. at 493-94.

Following the logic of *Hanover Shoe*, in *Illinois Brick*, this Court held that only direct purchasers may pursue overcharge damage claims arising from an antitrust violation. This Court reasoned that (1) apportioning damages among different levels of the distribution system "would add whole new dimensions of complexity to treble-damages suits and seriously undermine their effectiveness;" (2) permitting indirect purchasers to sue would subject the defendants to the risk of multiple liability; and (3) "antitrust laws will be more effectively enforced by concentrating the full recovery for the overcharge in the direct purchaser rather than by allowing every plaintiff potentially affected by the overcharge to sue only for the amount it could show was absorbed by it." 431 U.S. at 735-38.

Subsequently, in *Utilicorp*, this Court emphasized its commitment "not to 'carve out exceptions to the [*Illinois Brick*] rule for particular types of markets.'" 497 U.S. at 216. *Utilicorp* specifically disagreed with the Seventh Circuit's decision in *Illinois v. Panhandle Eastern Pipe Line Co.*, 852 F.2d 891 (7th Cir. 1988), which had carved out an exception to *Illinois Brick* in a case where direct-purchasing public utilities had passed on most or all of an overcharge to their customers. Instead, this Court held that "even assuming that any economic assumptions underlying the *Illinois Brick* rule might be disproved in a specific case, we think it an unwarranted and counterproductive exercise to litigate a series of exceptions." *Utilicorp*, 497 U.S. at 217.

The Court further held that, although "[t]he rationales underlying *Hanover Shoe* and *Illinois Brick* will not apply with equal force in all cases," the "possibility of allowing an exception, even in rather meritorious circumstances, would undermine the rule." *Id.* at 216. In this case, the Seventh Circuit has purported to discover yet another exception to *Illinois Brick*.

A. The Seventh Circuit's Opinion Requires the Trier of Fact to Perform the "Pass-On" Analysis That This Court Has Forbidden

1. The Seventh Circuit Acknowledges This Is an Overcharge Case Subject to *Illinois Brick*

The Seventh Circuit made several findings that *should* have led it to bar Respondents' claims under the clear holdings of *Illinois Brick*.

First, the Seventh Circuit acknowledged that this case is about an alleged manufacturer-level overcharge: "the plaintiffs' complaint is that they were overcharged because the wholesalers passed on to them the overcharge that the wholesalers had to pay the manufacturers by virtue of the price-fixing conspiracy."[12] 123 F. 3d at 606 (App. 8a); *see also id.* at 604. (App. 4a-5a)

In such a case, the Seventh Circuit recognized, the direct purchaser is given the exclusive right to sue for damages.

> [Plaintiffs' claim here] is just the kind of complaint that *Illinois Brick* bars. The only entities permitted to complain about the manufacturers' overcharging the wholesalers are the wholesalers themselves, the direct purchasers, even if every cent of the overcharge was

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[12] Respondents did not assert damages based on lost business opportunities, for such a theory requires individual proof, not classwide proof. 123 F.3d at 606 (App. 9a-10a). Thus, the Seventh Circuit rejected plaintiffs' attempts belatedly to posture their claim as a boycott or a refusal to deal case. *Id.* Nor is this a resale-price maintenance case (where there is an agreement on the wholesaler margin); there has never been an allegation that wholesaler margins were collusively set. *See* 1996 WL 167350, at *21 (App. 82a).

> promptly and fully passed on to the pharmacies in the form of a higher wholesale price.

Id. at 606 (App. 8a-9a).[13]

As noted above, one of the significant policy reasons for this rule is that, in order to allow indirect purchasers to recover, the trier of fact must, initially, determine the overcharge from the manufacturer to the wholesaler and, next, calculate the amount of overcharge, if any, passed on by the wholesaler to the indirect purchaser. Yet, as admitted by the Seventh Circuit elsewhere in its opinion, this type of incidence analysis is "famously difficult," and is precisely what "the Supreme Court in *Hanover Shoe*, *Illinois Brick*, and *Utilicorp* told the federal courts not to do." *Id.* at 606 (App. 9a).

Second, the Seventh Circuit held that the wholesalers are "entitled" to sue the manufacturers, despite their alleged participation in the conspiracy, *Id.* at 615 (App. 27a), apparently relying on *Perma Life Mufflers,* 392 U.S. at 134 (antitrust conspirator may sue upstream coconspirators where it had a subordinate role in the challenged activities).

The fact that the wholesalers are permitted to sue for damages (and in fact released those claims, for substantial consideration), combined with the need to perform an incidence analysis to assess Respondents' damages, dictates that Respondents' claims be barred under *Illinois Brick.* Such an outcome would be consistent with the black-letter rule and the policy considerations underlying *Illinois Brick* and *Utilicorp.*

Apparently ignoring both law and policy, however, the Seventh Circuit stated that if the Respondents "obtain a judgment against the wholesalers and manufacturers, any indirect-purchaser

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[13] The only possible exception to this bright-line rule that this Court has recognized was set forth in *Utilicorp*: "[W]e *might* allow indirect purchasers to sue *only* when . . . the direct purchaser will bear no portion of the overcharge and otherwise suffer no injury." 497 U.S. at 218 (emphasis added). Here, the Seventh Circuit made nothing even remotely approaching such a finding, nor could it.

defense would go by the board." 123 F.3d at 604 (App. 6a). The court offered no explanation as to how the above-noted factors — dictating application of the *Illinois Brick* rule — somehow are negated if a judgment is secured against the wholesalers. For example, such a judgment would not eliminate the need to trace the pass-on from manufacturer to wholesaler to retailer — an analysis that, as the Seventh Circuit acknowledged, "the Supreme Court . . . told the federal courts not to do." *Id.* at 606 (App. 9a).

2. The Three Cases Cited by the Seventh Circuit in Support of Its New Exception Are Inapposite

The Seventh Circuit cited three cases in support of its assertion that a finding of wholesaler complicity would suspend the indirect-purchaser defense — *Arizona v. Shamrock Foods Co.*, 729 F.2d 1208 (9th Cir. 1984), *cert. denied*, 469 U.S. 1197 (1985); *Fontana Aviation Inc. v. Cessna Aircraft Co.*, 617 F.2d 478 (7th Cir. 1980); and *In re Beef Industry Antitrust Litigation*, 600 F.2d 1148 (5th Cir. 1979), *cert. denied*, 449 U.S. 905 (1980). The court did not explain how these cases support its holding.

In fact, none of the cases supports the proposition that the presence of coconspiring middlemen (especially middlemen who, as the appellate court assumed here, may seek damages themselves) somehow nullifies this Court's condemnation of double recovery and "pass-on" analysis in *Illinois Brick* and *Utilicorp*. Indeed, none of the cases cited by the Seventh Circuit even attempt to analyze the *Illinois Brick* "factors" — the desire to avoid a pass-on analysis, the danger of multiple liability, and the encouragement of antitrust enforcement by placing the remedy in the hands of the direct purchasers — in the vertical "coconspirator" context. And none of the cases involve settlements of the type at issue here. In ruling that both direct and indirect purchasers may sue to recover the same overcharge, the

Seventh Circuit's ruling conflicts with each and every other court which has considered the question.[14]

Shamrock supports the view that such claims would continue to be barred under *Illinois Brick*. Like Respondents here, the *Shamrock* plaintiffs originally sought to recover damages barred by *Illinois Brick*:

> The consumers do not dispute that at the initiation of their suit, their focus was on a wholesale price-fixing conspiracy. Because this theory of necessity implies a pass-on of damages to the retail level, the consumers do not dispute that *Illinois Brick* would preclude their recovery on their original theory . . .

Shamrock, 729 F.2d at 1211. The *Shamrock* plaintiffs avoided the *Illinois Brick* bar by changing their theory to allege a conspiracy *directly* to fix prices at the retail level. *Id.* The Respondents here have not, and cannot, allege such a direct price-fixing scheme, for the district court recognized that the wholesalers' markups are *not* subject to any collusive agreement, and are competitively set. 1996 WL 167350, at *21-*22, *25-*26 (App. 82a-83a, 90a-91a).

The *Fontana* case is inapposite; it involved a conspiracy to exclude a competitor, not an alleged two-tier conspiracy to overcharge a customer. Moreover, the plaintiff in *Fontana* sought damages resulting from the alleged destruction of its business, not from indirect overcharges passed on to it. 617 F.2d at 480-81. It was simply not possible for the type of damages alleged in *Fontana* to be passed on; they were sustained, if at all, only by the plaintiff.

In the *Beef Industry* case, the court never reached the issue of whether *Illinois Brick* applies where direct purchasers are alleged to be participants in a multi-level conspiracy; the court

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[14] In addition to the authorities discussed herein, *see also, e.g., Sports Racing Servs., Inc. v. Sports Car Club of Am., Inc.*, No. 95-1411, 1997 WL 686013, at *11 (10th Cir. Oct. 28, 1997) (courts apply *Illinois Brick* to bar indirect or secondary purchaser claims because the intermediary direct purchaser is not precluded from bringing a similar action).

held only that the issue could not even be considered where the middlemen were not joined as defendants. 600 F.2d at 1160-61. But as this Court later warned in *Utilicorp*, joining all of the direct and indirect purchasers together in the same lawsuit does not solve the *Illinois Brick* problem. 497 U.S. at 213. That is especially true if, as the Seventh Circuit indicated here, the middlemen may be coconspirators and plaintiffs at the same time.

Petitioners do *not* assert that *Illinois Brick* bars other, more plausible claims by purchasers from an alleged vertical conspiracy (and there is no need for this Court to address the full scope of the so-called coconspirator exception to *Illinois Brick* in normal vertical cases). For example, where suppliers and dealers are alleged directly to have fixed minimum *resale* prices, as in *Shamrock*, the overcharge is borne directly by the dealer's customers and there is no need to conduct a pass-on analysis. But, as the Seventh Circuit found, this case raises each and every one of *Illinois Brick*'s policy concerns. This case involves an alleged overcharge that originated at the manufacturer level, was imposed directly on the wholesalers (even though they were said to be aiders and abetters), and was passed on in whole or in part to the Respondents. *Id.* (App. 8a-9a). Unlike a minimum retail price maintenance scenario, the wholesalers' and retailers' claims would involve the same manufacturer overcharge. This is a classic situation requiring application of the *Illinois Brick* bar. To hold otherwise would risk multiple liability and ensnare the courts in "litigating a series of exceptions" that this Court has warned against in no uncertain terms.

3. The "Settlement" Between the Manufacturers and the Wholesalers Should Not Change the *Illinois Brick* Analysis

The Seventh Circuit seemed to condition Respondents' ability to sue on whether or not the manufacturers have settled with the wholesalers:

> Some wholesalers were plaintiffs in this litigation; they settled. Had they not done so, and had the case proceeded to trial and the pharmacies been permitted to seek damages

> for the amount of the overcharge passed on to them, the court would have had to apportion the overcharges between the wholesalers and the pharmacies. That's just what the Supreme Court in *Hanover Shoe*, *Illinois Brick*, and *Utilicorp* told the federal courts not to do.

Id. (App. 9a).

Thus, under the Seventh Circuit's formulation, if the manufacturers do not settle with the wholesalers, Respondents' claims are barred under *Illinois Brick*; however, if the manufacturers *do* settle with the wholesalers, Respondents' claims somehow are activated.

Not surprisingly, the Seventh Circuit provided no explanation — much less authority from this or any other court — as to how the manufacturers' settlement with the wholesalers (for substantial consideration) in any way impacts the *Illinois Brick* analysis. No such authority exists. Whether or not a settlement is reached, a court entertaining an indirect purchaser claim would still be required to engage in the pass-on analysis forbidden under *Illinois Brick* and *Utilicorp*. This Court has made clear that in an overcharge case the direct purchasers, and only the direct purchasers, are authorized to sue for damages. *Illinois Brick*, 431 U.S. at 735. The direct purchasers are free to settle their claims, or not sue at all; in neither event is the indirect purchaser suddenly permitted to sue. *See, e.g., Carter v. Berger*, 777 F.2d 1173, 1175 (7th Cir. 1985) ("The response of antitrust law [to a pass-on claim] is stark: the direct purchaser recovers from the wrongdoer the full overcharge, trebled, even if it also recovered the whole overcharge by raising its own prices. The indirect purchaser recovers nothing, even if it bore the whole overcharge and even if the direct purchaser did not sue." (citation omitted)).

The Seventh Circuit's ruling conflicts with that of the D.C. Circuit in *Adams v. Pan American World Airways, Inc.*, 828 F.2d 24 (D.C. Cir. 1987), *cert. denied*, 485 U.S. 934, *and cert. denied*, 485 U.S. 961 (1988), which held, based on *Illinois Brick*, that settlement by a party directly affected by an antitrust violation cannot and does not confer standing on more remote parties:

> Nor is it an answer that [directly affected parties] have already settled their claims. Standing must be determined by uniform principles, not by accidents of sequence. A rule opening the door to marginal plaintiffs after settlement would virtually force defendants not to settle until all possible complainants were brought into the action or until the statute of limitations had run. Such behavior would clearly make it more difficult to prosecute antitrust violations and "undermine[ ] the effectiveness of treble-damages suits." *Associated General*, 459 U.S. at 545, 103 S.Ct. at 912. Besides, allowance of the present suit would unequivocally expose defendants to the risk of multiple liability, an alternative the Court has emphatically rejected. *Illinois Brick*, 431 U.S. at 730-31, 97 S.Ct. at 2066-67 (citing *Hawaii* v. *Standard Oil Co.*, 405 U.S. 251, 264, 92 S.Ct. 885, 892, 31 L.Ed.2d 184 (1972)). *See also id.* at 731 n. 11, 97 S.Ct. at 2067 n. 11 (recognizing that risk of multiple liability is particularly great where some parties settle).

828 F.2d. at 31.

B. The Seventh Circuit's Opinion Endorses Duplicative Recovery by Direct and Indirect Purchasers

In addition to ignoring this Court's admonition against engaging in "pass-on" analyses, the Seventh Circuit's decision supports duplicative recovery by direct and indirect purchasers. By conditioning the right of indirect purchasers to sue on the existence of a settlement between the alleged price-fixing manufacturers and the direct-purchasing wholesalers, the Seventh Circuit permitted multiple levels of direct and indirect purchasers to sue for the same overcharge damages, making duplicative recoveries almost inevitable.

This result flies in the face of this Court's policy to concentrate recovery (and the incentive to sue) in one level of plaintiff — the direct purchaser — and ignores this Court's repeated instruction that the rules on direct and indirect-purchaser standing must serve to "eliminate multiple recoveries," *Utilicorp*,

497 U.S. at 212, or even "a serious risk of multiple liability for defendants," *Illinois Brick*, 431 U.S. at 730. The Seventh Circuit's position also sets it apart from the other circuits, which have followed *Illinois Brick* and only allowed one level of plaintiff to sue for overcharge damages. For example, most recently, the Tenth Circuit recognized that "courts apply the *Illinois Brick* rule to bar the indirect or secondary purchasers' claims because the intermediary direct purchaser is not precluded from bringing a similar claim." *Sports Racing Servs., Inc.*, 1997 WL 686013, at *11; *see also, e.g., Shamrock*, 729 F.2d at 1211-14.

When settling a price-fixing claim, antitrust defendants reasonably expect (under *Illinois Brick*) to extinguish *all* liability flowing from the alleged overcharge. They certainly do not expect to trigger further litigation with indirect purchasers involving complex pass-on issues, on the one hand, or to expose themselves to the risk of multiple recovery on the other. But this is what antitrust defendants in the Seventh Circuit may look forward to if this decision is permitted to stand.

C. The Seventh Circuit's Opinion Dramatically Reduces a Direct Purchaser's Incentive to Sue

It is fundamental to the *Hanover Shoe*, *Illinois Brick* and *Utilicorp* line of cases that antitrust enforcement is furthered by handing a powerful incentive to the direct purchaser from the alleged conspirators, who can proceed secure in the knowledge that remote purchasers will not claw back some part of the recovery. *Illinois Brick*, 431 U.S. at 745-46. This Court recognizes that direct purchasers may not always take advantage of the incentive, but has repeatedly rejected arguments about the alleged "reluctance" of direct-purchasing middlemen to sue their suppliers, in favor of a bright-line test that establishes at the outset of the litigation who may be the plaintiff. *Id.* at 746.[15]

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[15] In any event, this is not an industry in which the direct purchasers are afraid to sue. In the past, pharmaceutical wholesalers have been perfectly willing to bring price-fixing claims against drug manufacturers. *See West Virginia v. Chas. Pfizer & Co.*, 314 F. Supp. 710, 746 (S.D.N.Y. 1970), *aff'd*, 440 F.2d 1079

The Seventh Circuit's ruling here seriously dilutes a direct purchaser's incentive to break out of an alleged cartel and sue for damages. For, by doing so, the direct purchaser exposes itself to a lawsuit from indirect purchasers who will then assert the newly created exception to *Illinois Brick*, thus threatening to wring out of the direct purchaser any damages it may have recovered from the conspiring manufacturers.

II. THE SEVENTH CIRCUIT'S OPINION WILL OPEN THE FLOODGATES TO INDIRECT-PURCHASER LITIGATION

The Seventh Circuit's opinion in this case affords a roadmap for plaintiffs looking for a detour around the *Illinois Brick* wall: just sue the middlemen, claiming that they aided and abetted the conspiracy.

In virtually any case where the indirect purchasers have enough "evidence" of manufacturer conspiracy to draft a complaint, avoid Rule 11 sanctions, and survive summary judgment, they will also have a viable argument that the direct-purchasing middlemen were "on notice" of those very same facts. But under the Seventh Circuit's approach, the middlemen will be damned if they do take action themselves, and damned if they do not. If they *do* file an antitrust case, indirect purchasers can sue as soon as the direct purchasers reach a settlement. If they *do not* file suit — notwithstanding their being "on notice" of the relevant information — it will be little trouble for the indirect purchasers to place some sinister construction on the wholesalers' failure to act. That, plus the inevitable price-related conversations between buyers and sellers,[16] will provide a neat and convenient method to survive summary judgment despite the general rule barring

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(2d Cir.), *cert. denied*, 404 U.S. 871 (1971); *In re Ampicillin Antitrust Litig.*, 81 F.R.D. 395, 398 (D.D.C. 1978).

[16] This Court has recognized that "[a] manufacturer and its distributors have legitimate reasons to exchange information about the prices and the reception of their products in the market," *Monsanto Co. v. Spray-Rite Serv. Corp.*, 465 U.S. 752, 762 (1984), and has cautioned against inferring a price-fixing conspiracy from such "highly ambiguous evidence." *Id.* at 763.

antitrust claims based on indirect purchases. *Hanover Shoe*, *Illinois Brick* and *Utilicorp* will effectively have been overruled.[17]

III. PUBLIC POLICY MILITATES AGAINST DEPARTING FROM THE *ILLINOIS BRICK* RULE

Where the *Illinois Brick* doctrine bars an indirect purchaser's overcharge damage claim, purported equitable considerations cannot dictate a contrary result, lest the courts become bogged down in litigating a series of exceptions. As set forth above, there is no authority supporting the new exception created by the Seventh Circuit. Nor do the equities of this case favor the creation of such an exception.

A. Retail Pharmacies Practice the Same Type of Price Differentiation Themselves and Likely Pass on a Portion of Any Putative Overcharge

In response to the power of managed care, retail pharmacies (like pharmaceutical manufacturers and other providers of healthcare goods and services) accept lower payments from patients of managed-care plans than from cash paying customers. (Doc. 2047 at ¶ 33.) Thus, Respondents themselves engage in pricing practices that are similar to those they challenge in this litigation.

Moreover, while Respondents will seek to avoid the *Illinois Brick* bar to their own claims, they no doubt also will use every effort to avail themselves of *Hanover Shoe*'s prohibition against any inquiry into how much of their claimed "overcharge damages" they themselves passed on to consumers. *See West*

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[17] Indeed, the first such new crack in the *Illinois Brick* wall may have already occurred, two months after the Seventh Circuit opinion was issued in this case. In *Rozema v. The Marshfield Clinic*, 977 F. Supp. 1362 (W.D. Wis. 1997), the court held that indirect purchasers' antitrust claims would not be barred under *Illinois Brick* because the direct-purchasing middlemen were alleged to be coconspirators. *Id.* at 1375. The court supported this conclusion simply by citing the Seventh Circuit's opinion at issue here, and without any analysis of the key *Illinois Brick* factors, such as the necessity of a pass-on analysis and whether the direct purchasers also had a cause of action. *Id.*

Virginia v. Chas. Pfizer & Co., 314 F. Supp. at 728, 745-46 (recognizing that retail druggists pass-on some portion of price increases). Carried to its logical conclusion, the reasoning of the Seventh Circuit would permit a federal Sherman Act claim by an indirect-purchasing consumer. The consumer could simply allege that the retailers, too, were part of the vertical conspiracy (however unwillingly) and that he or she was the direct purchaser from the cartel.

This Court has held, however, that "the reasoning of *Hanover Shoe* cannot justify unequal treatment of plaintiffs and defendants with respect to the permissibility of pass-on arguments." *Illinois Brick*, 431 U.S. at 731. There is no reason to depart from that rule in this case.[18]

B. Alleged Wholesaler "Complicity" Does Not Justify Abandonment of Compelling Policy Considerations

This Court held in *Perma Life Mufflers* that alleged antitrust conspirators may sue upstream coconspirators, at least where they have a subordinate role in the challenged activities. 392 U.S. at 139-40. Strong policy reasons underpin this holding, namely, encouraging reluctant downstream participants in a vertical conspiracy to break out of the inappropriate activity. *See, e.g., Blackburn* v. *Sweeney*, 53 F.3d 825, 829 (7th Cir. 1995). The Seventh Circuit acknowledged this purpose as well, and made clear that, at most, the wholesalers were "reluctant accomplices" in the alleged conspiracy. Accordingly, the Seventh Circuit noted that the wholesalers were "entitled" to sue for damages. 123 F.3d at 615 (App. 27a). Thus, even assuming (contrary to fact) that there *was* a conspiracy and the wholesalers *were* cats–paws, there was no reason for the Seventh Circuit to abandon the policies underlying both *Illinois Brick* and *Perma Life Mufflers*.

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[18] Even if Respondents cannot recover damages based on their indirect purchases, if they prevail they may still recover damages based on their direct purchases, which are substantial.

C. The Courts Should Not Twist *Illinois Brick*'s Policy Out of Shape to Accommodate an Economically Implausible Theory: That Wholesalers Conspired to Pay Higher Than Competitive Prices

Unlike the typical antitrust case (in which participants are accused of colluding to charge higher than competitive prices), here the wholesalers are accused of conspiring to *purchase* from their suppliers at a supracompetitive price. Such behavior is contrary to self-interest, and such a theory of liability makes little sense. There is scant danger indeed that reversing the Seventh Circuit's decision would serve to immunize a rash of conspiratorial activity, as middlemen rush to conspire with manufacturers to inflate prices at the manufacturer level.

CONCLUSION

For the foregoing reasons, the petition for a Writ of Certiorari should be granted.

January 5, 1998

Respectfully submitted,

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No. 97-____ (12)

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1997

IN RE: BRAND NAME PRESCRIPTION DRUGS ANTITRUST LITIGATION,

ABBOTT LABORATORIES, et al.,

Petitioners,

—v.—

HJB, INC., et al.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI

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IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

Nos. 96-2814, 96-2458, 96-2485 & 97-2156

IN RE BRAND NAME PRESCRIPTION DRUGS
ANTITRUST LITIGATION

APPEALS OF ROBERT A. HUGGINS, *et al.*

Appeals from the United States District Court for the
Northern District of Illinois, Eastern Division.
MDL No. 997—Charles P. Kocoras, *Judge*.

Argued June 25, 1997—Decided August 15, 1997*

Before POSNER, *Chief Judge*, and BAUER and DIANE P. WOOD, *Circuit Judges*.

POSNER, *Chief Judge*. We have consolidated for decision four appeals (in two of which we have jurisdiction under 28 U.S.C. § 1292(b) and in the other two under 28 U.S.C. § 1291 and Fed. R. Civ. P. 54(b)) from rulings in a huge price-fixing litigation that the Judicial Panel on Multidistrict Litigation has consolidated in the Northern District of Illinois for pretrial proceedings. The consolidation covers hundreds of sep-

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* The decision is being released in typescript.

arate cases (a number of them class actions) brought under section 1 of the Sherman Act, 15 U.S.C. § 1, by retail pharmacies against manufacturers and wholesalers of prescription drugs. The pharmacies complain that the defendants have conspired among themselves to deny all pharmacies, including chains and buying groups, discounts off the list price of brand-name drugs that the manufacturers sell to the wholesalers and that the wholesalers in turn resell to the pharmacies. A brief sketch of the operation of the alleged conspiracy will provide the essential background to understanding the issues presented by these appeals.

While refusing to give pharmacies any discounts, the defendants give steep discounts to favored classes of customers, including hospitals, health maintenance organizations, nursing homes, and mail-order companies. The defendants maintain this differential pricing through a "chargeback" system. Under that system, the manufacturer makes a contract with the favored customer establishing a discounted price at which the customer is entitled to buy from wholesalers; the wholesaler sells to the favored customer at that price; and the manufacturer then reimburses the wholesaler for the difference between the regular wholesale price and the discounted price. So if the manufacturer's regular price to the wholesaler for some drug is $100 and the contractually agreed upon discounted price for a favored customer is $75, the wholesaler will pay the manufacturer $100 for the drug but resell it to the favored customer ar $75 and bill the manufacturer $25. The plaintiffs claim that the purpose of the chargeback system is to make it difficult for the favored customers to engage in arbitrage, that is, to buy more than they need and resell the surplus to pharmacies at a price between the discounted price that the favored customers pay and the higher, undiscounted wholesale price that nonfavored customers pay. The chargeback system permits the wholesalers to buy cheap only when they are reselling to someone whom the manufacturer wants to be given a discount.

The defendants' differential pricing of their drugs is discriminatory in the technical economic sense—it involves charging different prices for the same goods, the differences being unrelated to savings in the costs of serving the favored customers. When the lower of two discriminatory prices covers the seller's cost, the higher price must exceed that cost. This creates an incentive for the favored purchasers to order more of the good than they need for their own use and to sell the surplus to disfavored customers at a price somewhere in between the seller's different prices. For example, an $80 resale by a hospital or other favored customer that had bought at $75 to a pharmacy that had bought at $100 would make both parties to the resale better off; the hospital would have a profit of $5 and the pharmacy would obtain a cost savings of $20. This is arbitrage and would erode the two-price system. The chargeback system prevents arbitrage. The wholesaler who resold to a pharmacy at a significant discount would incur a loss, since he would not be able to charge back any part of the discount to the manufacturer. Although a federal statute forbids hospitals and other providers of health care to resell to other sellers the pharmaceutical drugs that they buy, the statute does not cover all the favored customers for such drugs. 21 U.S.C. § 353(c)(3). Anyway statutes are not always fully obeyed. The chargeback system fills the gap in the statute's coverage and does not require heavy enforcement costs.

The presence of price discrimination in the economic sense is evidence of the presence of monopoly power—the power to raise price above cost without losing so many sales as to make the price rise unsustainable. If the lower price covers the seller's cost, the higher price must exceed it; so competition must be weak or absent, because it has failed to force price down to cost (including in "cost" a reasonable return on investment). Since monopoly power can be created by collusion among competing sellers, the existence of industry-wide price discrimination is some evidence of collusion. But it is not conclusive evidence, especially in an industry such as

pharmaceuticals many of the products of which are patented. The sellers may be selling goods that although close substitutes are not perfect substitutes, with the result that each seller has some monopoly power and therefore can price discriminate unilaterally. It might want to do so to take advantage of the fact that some consumers are less able to resist high prices than others. A fully developed record might show, in accordance with contested evidence in the record compiled to date, that a pharmacy has little choice but to buy a wide range of competing drugs because it cannot know in advance which drug its customers' doctors will prescribe. An HMO, however, can (within limits) tell the doctors it employs what drugs to prescribe, and it can use that power to extract price concessions from the individual manufacturers, who naturally however do not wish to extend the concessions to captive consumers such as the pharmacies.

In the extensive pretrial proceedings that have been conducted to date in this litigation, the plaintiffs have presented evidence that the defendant manufacturers agreed among themselves, and also with the defendant wholesalers, to refuse discounts to pharmacies and to make this refusal stick by adopting the chargeback system in order to prevent arbitrage. In other words, the claim is that pervasive price discrimination in the pharmaceutical market is the result not of individual decisions by manufacturers who possess some monopoly power but of an agreement to practice price discrimination. The plaintiffs' objection is not to the discrimination as such; although there is a Robinson-Patman claim in the complaint, it is not part of the appeal. The plaintiffs' objection is to having to pay high prices that, but for the defendants' alleged conspiracy, would be brought down by competition.

One might have supposed that if the defendants were going to collude on price, they would go the whole hog and agree not to provide discounts to the hospitals and other customers favored by the discriminatory system. But the defendants' cartel—if that is what it is—may not be tight enough to pre-

vent hospitals and other bulk purchasers with power to shift demand among different manufacturers' drugs from whipsawing the members of the cartel for discounts; or maybe these purchasers could shift demand to manufacturers that are not members of the cartel. If, for whatever reason, the elasticity of demand for a cartel's product differs among groups of purchasers, a single cartel price will not be profit-maximizing unless a discriminatory price scheme cannot be enforced at reasonable costs.

The manufacturers moved for summary judgment, arguing that there wasn't enough evidence of collusion to warrant a trial. The district judge denied the motion. The correctness of his ruling is not before us. And whether it was correct or not, the reader should bear in mind that the manufacturers have not been found to have violated the Sherman Act; the only determination is that there is enough evidence of a violation to require that the case be allowed to proceed to trial.

The judge granted summary judgment to one of the manufacturers, however, DuPont Merck Pharmaceutical Company. The plaintiffs' appeal from that ruling is one of the four appeals before us. The judge also granted summary judgment to the wholesaler defendants because he thought there was insufficient evidence of their participation in the manufacturers' conspiracy to warrant a trial. That is another ruling appealed from. Another is the judge's refusal to dismiss indirect-purchaser claims by pharmacies that paid overcharges as a consequence of the alleged manufacturers' conspiracy. The manufacturers argued unsuccessfully that only the first tier of purchasers ("direct purchasers"), composed of the wholesalers and others who purchased drugs directly from the manufacturers, and not the second tier, composed of pharmacies that purchased the manufacturers' drugs from the wholesalers ("indirect purchasers"), are permitted to bring a suit for overcharges under the Sherman Act. In the last ruling that has been appealed to us, the judge refused to remand a class action that alleges violations not of the Sherman Act but of

Alabama's antitrust statute, which expressly authorizes suits by indirect purchasers.

The indirect-purchaser issue (with which we begin) is separate from the issue of the wholesalers' participation in the manufacturers' alleged conspiracy. It is true that if we reversed the judge's ruling on the latter issue and so reinstated the wholesalers as defendants, and if the plaintiffs went on to obtain a judgment against the wholesalers and manufacturers, any indirect-purchaser defense would go by the board, since the pharmacies would then be direct purchasers from the conspirators. *Fontana Aviation, Inc. v. Cessna Aircraft, Co.*, 617 F.2d 478, 481 (7th Cir. 1980); *Arizona v. Shamrock Foods Co.*, 729 F.2d 1208, 1212–13 (9th Cir. 1984); see also *In re Beef Industry Antitrust Litigation*, 600 F.2d 1148, 1163 (5th Cir. 1979) (requiring that the direct sellers, here the wholesalers, be joined as defendants—but that requirement is satisfied). But even if we do reinstate the wholesalers as defendants, an issue discussed later in this opinion, the plaintiffs may fail at trial to establish their liability, in which event the indirect-purchaser issue will be decisive. So, the issue being fully briefed and argued in this court, we should decide it; and the fact that it may in the end not prove decisive does not show that the district judge and we were wrong to certify his ruling on the issue under 28 U.S.C. § 1292(b) (interlocutory appeal of a ruling on a controlling question) for an immediate appeal. *Sokaogon Gaming Enterprise Corp. v. Tushie-Montgomery Associates, Inc.*, 86 F.3d 656, 658-59 (7th Cir. 1996); *Johnson v. Burken*, 930 F.2d 1202, 1205 (7th Cir. 1991); *Katz v. Carte Blanche Corp.*, 496 F.2d 747, 755 (3d Cir. 1974); 16 Charles Alan Wright, Arthur R. Miller & Edward H. Cooper, *Federal Practice and Procedure* § 3930, pp. 426-27 (2d ed. 1996).

A brief review of the evolution of the indirect-purchaser doctrine in the Supreme Court will point us toward a resolution of the issue. In *Hanover Shoe, Inc. v. United Shoe Machinery Corp.*, 392 U.S. 481 (1968), the defendant in a Sherman Act suit, a manufacturer of machinery for making

shoes, defended on the ground that the plaintiff, a shoe manufacturer that had bought the defendant's machinery, had passed on any monopoly overcharge to its own customers, the wholesale purchasers of its shoes, and hence had not been injured. A firm hit with an increase in the cost of one of its inputs will try so far as competition allows to pass that cost on to its customers in the form of a higher price for its product. The Supreme Court held, however, that an antitrust defendant would not be permitted to defend against a damages suit on the ground that the plaintiff had shifted the cost of the defendant's wrongdoing to the plaintiff's customers. Such a defense would complicate antitrust enforcement by requiring an apportionment of damages between different tiers of purchasers of the defendant's product. Tracing a price hike through successive resales is an example of what is called "incidence analysis," and is famously difficult.

The Court took the next step in *Illinois Brick Co. v. Illinois*, 431 U.S. 720 (1977), and held that the second or subsequent tiers, the indirect purchasers from the antitrust violators, couldn't sue; only the first tier could. This was a logical corollary of the rejection of the passing-on defense in *Hanover Shoe*, since to determine the damages suffered by subsequent tiers of purchasers would require the very apportionment of damages that the Court had rejected in the earlier case.

Illinois Brick left unclear whether there might be exceptions for cases in which the amount of the overcharge that was passed on to a lower tier of purchasers could be determined simply and with mechanical precision. A plausible example, we thought, would be a case in which the first tier of purchasers consisted of public utilities that as a consequence of government regulation passed on any cost increase dollar for dollar to their customers. *Illinois v. Panhandle Eastern Pipe Line Co.*, 852 F.2d 891 (7th Cir. 1988) (en banc). Shortly afterward, in a similar case, the Supreme Court held that such cases are not within any exception to the *Illinois Brick* doctrine, *Kansas v. Utilicorp United, Inc.*, 497 U.S. 199 (1990),

and we duly overruled our *Panhandle* opinion. *Illinois v. Panhandle Eastern Pipe Line Co.*, 935 F.2d 1469 (7th Cir. 1991). *Utilicorp* implies that the only exceptions to the *Illinois Brick* doctrine are those stated in *Illinois Brick* itself—"where the direct purchaser is owned or controlled by its customer," 431 U.S. at 736 n. 16, or, we suppose, vice versa. The first exception (ownership) is conceded to be inapplicable here; the wholesalers are not corporate affiliates of the manufacturers. The second (control) is inapplicable as well. The manufacturers do not control the wholesalers through interlocking directorates, minority stock ownership, loan agreements that subject the wholesalers to the manufacturers' operating control, trust agreements, or other modes of control separate from ownership of a majority of the wholesalers' common stock. *Jewish Hospital Ass'n v. Stewart Mechanical Enterprises, Inc.*, 628 F.2d 971, 975 (6th Cir. 1980); cf. *Gould v. Ruefenacht*, 471 U.S. 701, 705 (1985).

The district judge held, however, primarily on the basis of the chargeback system, that the wholesalers are really nothing more than "glorified warehouses" of the manufacturers. In so ruling, the judge gave undue weight to the chargeback system. The favored customers, the ones who had contracts with the manufacturers though they took delivery from the wholesalers, are not parties to this litigation. They certainly are not complaining about the system of discriminatory pricing. They were not overcharged, and their right if any to recover overcharges in a suit against the manufacturers is not in issue. The plaintiffs are the disfavored customers. They did not have contracts with the manufacturers, they did not receive discounts, and the wholesalers did not receive chargebacks on sales to them. The plaintiffs' complaint is that they were overcharged because the wholesalers passed on to them the overcharge that the wholesalers had to pay the manufacturers by virtue of the price-fixing conspiracy. This is just the kind of complaint that *Illinois Brick* bars. The only entities permitted to complain about the manufacturers' overcharging the wholesalers are the wholesalers themselves, the direct

purchasers, even if every cent of the overcharge was promptly and fully passed on to the pharmacies in the form of a higher wholesale price.

Some wholesalers were plaintiffs in this litigation; they settled. Had they not done so, and had the case proceeded to trial and the pharmacies been permitted to seek damages for the amount of the overcharge passed on to them, the court would have had to apportion the overcharge between the wholesalers and the pharmacies. That's just what the Supreme Court in *Hanover Shoe*, *Illinois Brick*, and *Utilicorp* told the federal courts not to do.

We can imagine the present case reconfigured in a way that might take it out of the orbit of these decisions; it would not be a matter of carving a further exception. A number of pharmacies have tried to improve their bargaining position vis-à-vis the drug manufacturers by forming buying groups. The bigger a buyer is, the more likely it is to be able to obtain a discount from a member of a cartel, since the volume of its purchases may compensate the member for endangering the cartel by granting a discount. George J. Stigler, "A Theory of Oligopoly," in Stigler, *The Organization of Industry* 39, 43-44 (1968). That is one motive for forming a buying group. The manufacturers have been steadfast in refusing to grant discounts to such groups. If this refusal, taking as it does the form of a refusal to enter into direct contractual relations with certain retailers, such as the manufacturers have with their favored customers, were successfully challenged as a boycott, *see FTC v. Superior Court Trial Lawyers Ass'n*, 493 U.S. 411, 428 (1990); *FTC v. Indiana Federation of Dentists*, 476 U.S 447, 458-59 (1986); *Collins v. Associated Pathologists, Ltd.*, 844 F.2d 473, 479 (7th Cir. 1988), the *Illinois Brick* rule, which is a rule concerning overcharges, would fall away. The plaintiffs would be permitted to prove up whatever damages they could show had flowed from the boycott, *Mid-West Paper Products Co. v. Continental Group, Inc.*, 596 F.2d 573, 585 n. 47 (3d Cir. 1979), provided they weren't seeking to recover overcharges, for that would entail the very incidence

analysis that *Illinois Brick* bars. *Merican, Inc. v. Caterpillar Tractor Co.*, 713 F.2d 958, 966-68 and n. 21 (3d Cir. 1983). But that is precisely what they *are* seeking. The certified class is of pharmacies that paid overcharges, and the certification was based on the uniformity of the harm. It would be more difficult to justify class treatment of a boycott of buying groups. Compare *White Industries, Inc. v. Cessna Aircraft Co.*, 845 F.2d 1497, 1502-03 (8th Cir. 1988), with *Bogosian v. Gulf Oil Corp.*, 561 F.2d 434, 455 (3d Cir. 1977). That may be why the plaintiffs have not cast their case in the boycott mold. We need not decide whether it is still open to them to do so in the district court.

To conclude our discussion of the drug manufacturers' federal antitrust liability to the indirect purchasers, the federal class actions should have been dismissed unless the wholesalers should not have been dropped as defendants, an issue we take up later. The Alabama class suit, which the district judge refused to remand, also involves the indirect-purchaser question; so let us turn to that suit. It was actually the second prescription-drug price-fixing suit brought in the Alabama state courts. The first had been removed to federal district court under the diversity jurisdiction and then transferred by the multidistrict panel to the Northern District of Illinois for consolidation with the other prescription-drug price-fixing suits. The district court had denied a motion to remand, so the suit remains in that court. Then our Alabama suit was filed, and like the first suit it was removed to federal district court and transferred to the Northern District of Illinois. It is a class suit on behalf of consumers in several states, not only Alabama, and it names as defendants a large number of drug manufacturers none of which either is a citizen of Alabama or sells exclusively to that state's residents. The suit is based, or at least purports to be based, on an Alabama statute that is modeled on the Sherman Act but that contains a provision which expressly authorizes indirect-purchaser claims—the very type of claim that *Illinois Brick* bars in suits under the Sherman Act. Ala. Code § 6-5-60(a). The defendants argued,

and the district court agreed, that the suit is removable to federal court under both the diversity statute and, by virtue of the doctrine of "artful pleading," the federal-question statute as well. 28 U.S.C. §§ 1331, 1332.

There is complete diversity of citizenship among the parties; the question, so far as the issue of diversity jurisdiction is concerned, is only whether the minimum amount in controversy required to maintain a diversity suit in federal court ($50,000 at the time the suit was filed) is present. The court cannot just add up the damages sought by each member of the class. *Snyder v. Harris*, 394 U.S. 332 (1969); *Zahn v. Int'l Paper Co.*, 414 U.S. 291, 301 (1973); *In re Corestates Trust Fee Litigation*, 39 F.3d 61, 64 (3d Cir. 1994). At least one named plaintiff must satisfy the jurisdictional minimum. If he does, the other named plaintiffs and the unnamed class members can, by virtue of the supplemental jurisdiction conferred on the federal district courts by 28 U.S.C. § 1367, piggyback on that plaintiff's claim. That is, they remain plaintiffs, or unnamed members of the class, as the case may be, even though their own claims are for less than the jurisdictional minimum amount. So the Fifth Circuit held in *In re Abbott Laboratories*, 51 F.3d 524, 527-29 (5th Cir. 1995), and we signified our agreement with that holding in *Stromberg Metal Works, Inc. v. Press Mechanical, Inc.*, 77 F.3d 928, 930-33 (7th Cir. 1996), and repeat it today.

The plaintiffs in this case, however, because they did not want their case removed to federal court, were careful to plead that the damages sought by each did not exceed $50,000. This is plausible—you would have to buy an awful lot of expensive drugs to run up a bill the overcharge portion of which alone was more than that amount. And plausible or not, a plaintiff can always stay under the minimum amount in controversy by waiving his right to more, *In re Amino Acid Lysine Antitrust Litigation*, 918 F. Supp. 1181, 1185-86 (N.D. Ill. 1996), though these plaintiffs have not established that they did mean to waive their right.

Compensatory damages, which we have just seen are not likely to exceed $50,000 for any of the named plaintiffs, are not the only form of monetary relief sought, however. The antitrust statute on which the Alabama class action is based authorizes the court to award up to $500 for each "instance of . . . injury or damages" as a statutory penalty, in addition to any compensatory damages. Ala. Code § 6-5-60(a). But the defendants cannot simply wave the statute in our faces. They have the burden of establishing federal jurisdiction when they seek to remove a case from state to federal court, and so they must present *evidence* of federal jurisdiction once the existence of that jurisdiction is fairly cast into doubt. *Chase v. Shop 'N Save Warehouse Foods, Inc.*, 110 F.3d 424, 427 (7th Cir. 1997); *Wellness Community-National v. Wellness House*, 70 F.3d 46, 49 (7th Cir. 1995); *Selcke v. New England Ins. Co.*, 2 F.3d 790, 792 (7th Cir. 1993). It was cast into doubt here by the complaint itself, which does not allege stakes in excess of $50,000 or facts from which such stakes can readily be inferred. Yet the defendants presented no evidence that, even with the statutory penalty added to the compensatory damages sought, any of the named plaintiffs is asking for more than $50,000. The defendants point out that it is *possible* that at least one of the plaintiffs had more than $50,000 in damages and penalties. A hundred purchases within the four-year period covered by the complaint would carry a purchaser over the threshold, even if the overcharge on each purchase was tiny, because each purchase, constituting we assume a separate "instance of . . . injury or damage," would entitle the purchaser to the $500 statutory penalty. But the defendants put in no evidence that any of the named plaintiffs in fact made this many purchases. Instead they argue that under Alabama law the *entire* statutory penalties awarded in a case are the indivisible penalty for a defendant's misconduct and so are the stakes in *each* of the plaintiffs' claims. If this is correct, and the plaintiffs have not waived a claim for total damages (compensatory damages plus the penalty) per plain-

tiff of more than $50,000, then the defendants had no need to present any evidence on the jurisdictional issue.

In arguing their interpretation of the Alabama statute, with the support of *Tapscott v. MS Dealer Service Corp.*, 77 F.3d 1353, 1359 (11th Cir. 1996), and less directly of *Allen v. R & H Oil & Gas Co.*, 63 F.3d 1326, 1334 (5th Cir. 1995), but in opposition to *Gilman v. BHC Securities, Inc.*, 104 F.3d 1418, 1428-31 (2d Cir. 1997), the defendants are gesturing toward the Supreme Court's statement in *Snyder v. Harris*, *supra*, 394 U.S. at 355, that when "two or more plaintiffs unite to enforce a single title or right in which they have a common and undivided interest," the amount in controversy is the aggregate in which they each have their undivided share. An example is an action by the heirs of an intestate estate against the estate's administrator. A successful prosecution of the action would result in making the estate larger, and each heir would have an undivided interest in the larger, as in the original, estate. *Shields v. Thomas*, 58 U.S. (17 How.) 3 (1855). Other examples are set forth in *Gilman v. BHC Securities, Inc.*, *supra*, 104 F.3d at 1423.

This is not such a case. The penalty prescribed by the Alabama statute is presumably per violation, that is, per sale at an unlawful price; and it is awarded to the victim of the particular violation, the direct or indirect buyer, rather than to the victims of the price-fixing conspiracy as a group or to a representative member of the group. If one plaintiff disclaimed the penalty awarded him under the statute, or settled with the defendant for an amount that included no penalty, the penalty thus forsworn would not go to another plaintiff; it would be subtracted from the total amount of penalties assessed against the defendant. Indeed, if the court had awarded the maximum penalty to each victim, it would be *impossible* for the court to shift the disclaimed penalty to another of the victims; to do so would pierce the ceiling. But we take it that even if one victim had received $300 rather than $500, the court would not give him another $200 if another victim had disclaimed his own $300 penalty.

It is possible we suppose that the judge could fix some amount that represented in his mind the proper punishment for the defendant's misconduct; divide that amount by the number of plaintiffs; and if the result of the division was greater than $500, cut down the aggregate accordingly. But even if, in acting so, the judge would be complying with the spirit as well as the letter of the statute, the resulting fund would not be a piece of property to which the plaintiffs had undivided rights. None of the victims would have an undivided right in a common fund or *res* such that if one claimant fell out the others' shares would grow. *Sellers v. O'Connell*, 701 F.2d 575, 579) (6th Cir. 1983); *Eagle Star Ins. Co. v. Maltes*, 313 F.2d 778, 781 (5th Cir. 1963).

A plaintiff's award of punitive damages is not limited by awards made to previous plaintiffs complaining of the same act of the defendant. E.g., *Allen v. R & H Oil & Gas Co.*, *supra*, 63 F.3d at 1334; *Dunn v. Hovic*, 1 F.3d 1371, 1385-86 (3d Cir. 1993); *Roginsky v. Richardson-Merrell, Inc.*, 378 F.2d 832, 839-41 (2d Cir. 1967) (Friendly, J.). This rule has been criticized (as by Judge Friendly in *Roginsky*), but whether it is a good rule or a bad rule it shows that the right to punitive damages is a right of the individual plaintiff, rather than a collective entitlement of the victims of the defendant's misconduct. *Gilman v. BCH Securities, Inc.*, *supra*, 104 F.3d at 1428-31. The rule may have to be qualified now that the Supreme Court has held that excessive awards of punitive damages violate the due process clause. *BMW of North America, Inc. v. Gore*, 116 S. Ct. 1589 (1996). For it could be argued that a piling on of awards by different courts for the same act might result in excessive punishment for that act. We need not decide whether this argument would ever succeed; it is unlikely to succeed to the point of converting entitlements to punitive damages from individual to collective entitlements.

That the defendants have failed to show that the plaintiffs are seeking more than $50,000 apiece against each defendant cannot be the end of our analysis of diversity jurisdiction. The

complaint seeks an injunction against the alleged conspiracy as well as damages and the penalty, and the defendants argue that it will cost them more than $50,000 to comply with the injunction even though the only plausible form of injunctive relief in a case like this would be to order the defendants to stop fixing prices. There are four ways in which a request for an injunction might be thought to carry a case over the amount in controversy threshold. The first way—plainly *one* valid way, e.g., *Hunt v. Washington State Apple Advertising Comm'n*, 432 U.S. 333, 347 (1977); *Gould v. Artisoft, Inc.*, 1 F.3d 544, 548 n. 4 (7th Cir. 1993); *Justice v. Atchison, Topeka & Santa Fe Ry.*, 927 F.2d 503, 505 (10th Cir. 1991); *Smith v. Washington*, 593 F.2d 1097, 1099 (D.C. Cir. 1978), and some courts think the *only* valid way, *Kheel v. Port of New York Authority*, 457 F.2d 46, 49 (2d Cir. 1972); *Bernard v. Gerber Food Products Co.*, 938 F. Supp. 218, 220-22 (S.D.N.Y. 1996)—is if the value of the injunction to the plaintiff exceeds the statutory minimum. So we could look to the present value of the future cost savings that each plaintiff anticipated from the cessation of each defendant's price fixing. No effort to quantify this value or array of values in even the roughest terms has been made, however, so we put it to one side.

Although one of our cases adopts the "plaintiff only" position, *Freeman v. Sports Car Club of America, Inc.*, 51 F.3d 1358, 1362 (7th Cir. 1995), it overlooked a decision in which we had squarely rejected that position in favor of the "either viewpoint" (plaintiff's or defendant's) approach, *McCarty v. Amoco Pipeline Co.*, 595 F.2d 389 (7th Cir. 1979). Looked at from the defendants' standpoint, the minimum amount in controversy would be present if the injunction sought by the plaintiffs would require some alteration in the defendant's method of doing business that would cost the defendant at least the statutory minimum amount. See, e.g., *id.* at 391. This ground is not argued either. Often it will be equivalent to the previous ground, the value of the injunction to the plaintiff. The defendant would be willing to pay the plaintiff up to a shade less than the cost that the injunction would impose on

the defendant to induce the plaintiff to abandon his quest for injunctive relief. In that way the cost to the defendant would be transmuted into an equivalent value to the plaintiff. If, however, there are multiple plaintiffs, actual or potential, the defendant will not be willing to pay each one as much as he would if there were only one possible plaintiff. It may seem paradoxical to defeat removal in the multiplaintiff setting on this basis. But it is implicit in the rule that forbids aggregation of class members' separate claims that it will sometimes be more difficult for a defendant desiring to remove a diversity case to federal court to establish the minimum amount of controversy in a multiplaintiff case than in a much smaller single-plaintiff case. Compare a class action in which one million class members each has a claim worth $1 with a case in which a single plaintiff has a claim worth $100,000. There is diversity jurisdiction in the second case but not (because of the nonaggregation rule in class actions, the rule of *Snyder* and *Zahn*) the first.

Concern has been expressed that if the cost to the defendant may be used to establish the minimum amount in controversy in an injunction case, it may be used for this purpose in a damages case, and then the nonaggregation rule will be circumvented. E.g., *Packard v. Provident Nat'l Bank*, 994 F.2d 1039, 1050 (3d Cir. 1993). The concern is misplaced. Whatever the form of relief sought, each plaintiff's claim must be held separate from each other plaintiff's claim from both the plaintiff's and the defendant's standpoint. The defendant in such a case is deemed to face multiple claims for injunctive relief, each of which must be separately evaluated. *Snow v. Ford Motor Co.*, 561 F.2d 787, 790 (9th Cir. 1977). The question then becomes, as with the penalty statute, whether each plaintiff is asserting an individual right or, rather, a right to an undivided interest in something. In this case it is the former. Each plaintiff has a right to be free from the indirect effects of collusive pricing. Moreover, the grant of an injunction in favor of a single plaintiff would be unlikely to impose a heavy cost on any of the defendants; each defendant could

continue in its own way of pricing with respect to all other plaintiffs. The test, we repeat, is the cost to each defendant of an injunction running in favor of one plaintiff; otherwise the nonaggregation rule would be violated.

Still another way in which the requirement of the statutory minimum amount in controversy can be satisfied in an injunctive case is by showing that the injunction would force the defendant to forgo a benefit to him that is worth more than the threshold amount specified in the diversity statute, e.g., *Grotzke v. Kurz*, 887 F. Supp. 53 (D.R.I. 1995), as where the suit asks that the defendant be enjoined from completing a lucrative transaction. That is not argued here either. The reason may be that while an injunction against price fixing might prevent a defendant from engaging in lucrative unlawful transactions, it would not deprive the defendant of a *legally protected* interest. It would not be like the case in which the defendant, in order to extirpate the effects of its unlawful act, is forced to restructure its operations at a cost that may greatly exceed any profit it made from the act. Structural relief is frequently decreed in merger cases under section 1 of the Sherman Act or section 7 of the Clayton Act or in monopolization cases under section 2 of the Sherman Act, but very rarely in a price-fixing case, such as we have here.

The last way of satisfying the requirement of the minimum amount in controversy in an injunction case, the way principally argued by the defendants, is that a defendant's clerical or ministerial costs of compliance might carry a case across the threshold. Even if an injunction doesn't require the defendant to restructure its business or give up a lucrative lawful business opportunity, but merely tells him to stop doing something illegal, such as conspiring to fix prices, there will be lawful costs of compliance. Just the cost of duplicating an injunction in a case such as this and distributing the copies to all the relevant personnel might exceed $50,000 for each defendant, and, if so, this would argue for allowing removal to federal court. The argument would be the same as before—given the possibility of a settlement, a suit is worth as much to

the plaintiff in the form of an expected value of settling it as it is costly to the defendant, at least in the single-plaintiff case. But if the argument were accepted, then every case, however trivial, against a large company would cross the threshold, whether the threshold was $50,000 or as it now is $75,000, even if the plaintiff were asking for an injunction against disclosing his unlisted telephone number. It would be an invitation to file state-law nuisance suits in federal court. We needn't bite this bullet. The defendants have made no effort to show that what is conceivable is also probable by quantifying the internal cost of compliance to each of them and then adding it to a plaintiff's compensatory damages and penalty entitlement.

The alternative basis on which the district court permitted the removal of the Alabama suit to the federal district court was the "artful pleading" doctrine. The doctrine is usually taken to mean that if federal law has so far occupied a field of disputes as to extinguish any basis in state law for seeking a resolution of the dispute, a plaintiff cannot prevent removal by casting his claim as one under state law—it must actually be a claim under federal law because only federal law could supply a ground for relief. *Caterpillar Inc. v. Williams*, 482 U.S. 386, 393-94 (1987); *Avco Corp. v. Aero Lodge No. 735*, 390 U.S. 557 (1968), *Kaucky v. Southwest Airlines Co.*, 109 F.3d 349, 351 (7th Cir. 1997). And as such it can be removed to federal court even if it is not within the diversity jurisdiction, and, by virtue of 28 U.S.C. § 1441(e) (added in 1986), even if the state court could not have exercised jurisdiction over the case because it is a type of case that is within the exclusive jurisdiction of the federal courts, as well as being a case in which only federal law can supply the rule of decision.

It may seem odd to allow removal and retention in such cases, rather than to trust the state court to dismiss a suit that is frivolous because it is based on nonexistent (because preempted) state law, especially since a defense of preemption is normally not a basis for removal and is therefore decided by

the state court. *Metropolitan Life Ins. Co. v. Taylor*, 481 U.S. 58, 63 (1987); *Franchise Tax Board v. Laborers Vacation Trust*, 463 U.S. 1, 24-27 (1983). The usual explanation is that if the suit *must* be based on federal law because that is the only law that such a suit *can* be based on (the standard example is a suit to enforce a collective bargaining agreement, which can be litigated only under federal law), the defendant is entitled to remove and his entitlement should not be defeated by the plaintiff's evasive drafting of the complaint. E.g., *Bartholet v. Reischauer A.G. (Zürich)*, 953 F.2d 1073, 1075 (7th Cir. 1992). It's true that the defendant should be able to defeat this maneuver in state court by moving to dismiss the suit as frivolous; if the plaintiff countered by coming out of his state-law closet and acknowledging that he was trying to plead a federal case, the defendant could then remove. 28 U.S.C. 1446(b). But should the defendant be put to the bother? If as a matter of fact the plaintiff is really intending to bring a federal suit though failing to cite federal law, it can be argued that his intentions should be taken as the reality and so the defendant allowed to remove what is functionally though not formally a federal suit.

The problem comes in setting limits to the doctrine. There are countless cases in which a suit under state law could be thought to be a federal suit in state clothing. Antitrust law, for example, with an isolated exception, *Flood v. Kuhn*, 407 U.S. 258, 284-85 (1972), is a field in which Congress has *not* sought to replace state with federal law. *California v. ARC America Corp.*, 490 U.S. 93, 101-02 (1989). The states are free to enact their own antitrust laws, reaching the same conduct as the federal laws except insofar as the states' power to regulate economic activities in other states is limited by the commerce and due process clauses of the federal Constitution. See Herbert Hovenkamp, "State Antitrust in the Federal Scheme," 58 *Ind. L.J.* 375 (1983). This is a potentially significant qualification, as we shall see; but on the view taken by the defendants in this case, *any* time an antitrust plaintiff brings a suit in state court under a state antitrust statute that

contains substantive provisions similar to that of a federal antitrust statute, the defendant can remove on the ground that the plaintiff is trying to bring a federal antitrust suit yet to insulate it from removal to a federal court.

This surprising possibility gets a boost from a footnote in *Federated Department Stores, Inc. v. Moitie*, 452 U.S. 394 (1981). The plaintiffs in that case brought a class suit in a state court under state fraud law and state unfair competition law. The suit was removed to federal district court, properly in the Supreme Court's judgment because the district court had found as a fact that the plaintiffs "had attempted to avoid removal jurisdiction by 'artful[ly]' casting their 'essentially federal law claims' as state law claims." *Id.* at 397 n. 2. The suit had been filed after the district court had dismissed an earlier version, explicitly premised on federal antitrust law, on the basis of a federal defense that, like the "passing on" defense of *Illinois Brick*, the plaintiffs hoped would not be recognized by state law.

It is not easy to see why this is "artful pleading" in some invidious, evasive sense. Once the federal defense was held to block the plaintiffs' federal antitrust claim, their only hope was to proceed under state law. They had little motive to conceal a federal claim in state clothing, for their federal claim was dead. See *In re Application of County Collector*, 96 F.3d 890, 897 (7th Cir. 1996). It is the same here. The only motive the plaintiffs in our Alabama case could have for filing a case under the Alabama statute was to avoid the federal passing-on defense of *Illinois Brick*, a defense they could avoid only if they pressed their claim exclusively under state law—and if they did that the case would belong in state court because, as we have seen, it is not within the diversity jurisdiction and so is not removable to federal court on that basis.

The Supreme Court went on to hold in *Moitie* that the "artfully pleaded" (hence federal) claims that had been removed to federal court were barred by res judicata. The suit had been refiled in state court after final judgment had been entered against the plaintiffs in federal court. We can now see how the

refiling of these suits in state court under state law could be thought "artful pleading" in an invidious sense; and the Court did not say it *was* artful pleading—only that it would not question the district court's finding that it was. The plaintiffs had been trying to dodge a federal court's judgment. The defendants could have set up the judgment as res judicata in the state court in which the suits were refiled. But if the sole basis for filing a state suit is to get around, however temporarily and hopelessly, a federal judgment, it can be argued that the new "state law" suit is really the old federal suit in a transparent guise and that the federal court ought to say so in order to get rid of it quickly and thus protect the federal judgment against the possibility that the state court might abet the plaintiff's effort to get around a dispositive defense or other fatal flaw in his federal case. *Doe v. Allied-Signal, Inc.*, 985 F.2d 908, 911-12 (7th Cir. 1993); *Rivet v. Regions Bank of Louisiana, F.S.B.*, 108 F.3d 576, 586 (5th Cir. 1997); *Ultramar America Ltd. v. Dwelle*, 900 F.2d 1412 (9th Cir. 1990). Furthermore, any state claim in *Moitie* had been extinguished by the federal judgment, by operation of the doctrine of merger. Recall that the Court held the claim barred by res judicata. The reason was that the claim could have been joined to the plaintiffs' federal claim and arose from the same cluster of facts. In these circumstances, since it was not joined, it merged into the federal judgment and disappeared, leaving nothing on which to base a suit in state court.

There is no federal judgment here. Neither when the Alabama suit was filed nor when the motion to remand was filed was there any ruling by the district court, let alone a judgment, barring the suit on *Illinois Brick* (or any other federal) grounds. On the contrary, the district court thought *Illinois Brick* not a bar to a federal antitrust suit by indirect purchasers. It is true that the judge had refused to certify the first Alabama suit removed to the district court as a class action, but the denial of class certification is not a final judgment, terminating the underlying suit; the suit continues, only as an individual action rather than as a class action.

The plaintiffs may well be stretching the Alabama statute to the breaking point in seeking damages for nonresident plaintiffs from nonresident defendants who sell primarily in other states. If it were clear that the plaintiffs could get no significant relief under Alabama law, this would strengthen the inference that they were merely recaptioning their federal suit as one under state law. But it is not clear, even though the defendants are able to cite Alabama cases which say that Alabama's antitrust statute is indeed limited to intrastate commerce and it is doubtful that any of the price-fixed sales attacked in the suit took place in intrastate rather than interstate commerce. The cases on which the defendants rely, for example *Georgia Fruit Exchange v. Turnipseed*, 62 So. 542, 546 (Ala. 1913), date from a period in which, interstate commerce being narrowly defined, see, e.g. *Hadley Dean Plate Glass Co. v. Highland Glass Co.*, 143 Fed. 242, 244 (8th Cir. 1906), and federal power to regulate such commerce being deemed exclusive, *id.*; *United States v. E.C. Knight Co.*, 156 U.S. 1, 11 (1895), a state statute limited to intrastate commerce would have some, albeit a strictly limited, scope and could not have a greater scope no matter how much the state wanted it to. The cases thus were not interpreting the statute; they were interpreting the Constitution as placing upper and lower bounds on the reach of the statute, and the Constitution has since been reinterpreted. If the statute is limited today as it once was to commerce that is not within the regulatory power of Congress under the commerce clause, it is a dead letter because there are virtually no sales, in Alabama or anywhere else in the United States, that are intrastate in *that* sense, *United States v. Lopez*, 115 S. Ct. 1624, 1630 (1995); *Wickard v. Filburn*, 317 U.S 111 (1942); *United States v. Hicks*, 106 F.3d 187, 189-90 (7th Cir. 1997). Other states read their antitrust statutes to reach what is now understood to be interstate commerce. E.g., *R.E. Spriggs v. Adolph Coors Co.*, 112 Cal. Rptr. 585 (1974); *Health Consultants, Inc. v. Precision Instruments, Inc.*, 527 N.W.2d 596, 607 (Neb. 1995) (citing cases). The reading is constitutionally permissible,

Clay v. Sun Ins. Office, Ltd., 377 U.S. 179 (1964), and we are given no reason to suppose that Alabama would buck this trend and by doing so kill its statute.

A state's power to regulate interstate commerce is limited, however, by the provisions of the federal Constitution that limit the extraterritorial powers of state government. A state cannot regulate sales that take place wholly outside it. *K-S Pharmacies, Inc v. American Home Products Corp.*, 962 F.2d 728, 730 (7th Cir. 1992). State *A* cannot use its antitrust law to make a seller in State *B* charge a lower price to a buyer in *C*. Insofar as the Alabama suit challenges sales from plants or offices in other states to pharmacies in other states, it exceeds the constitutional scope of the Alabama antitrust law. But insofar as it challenges sales from other states to pharmacies in Alabama, it is within the intended and permissible scope of the statute, and, since there may well be a nontrivial number of such sales, the suit has enough potential merit as an Alabama antitrust suit to defeat the application of the "artful pleading" doctrine. The twist that *Moitie* gave to the doctrine is (very uncharacteristically for its author, Justice, now Chief Justice, Rehnquist) based on distrust of state courts, and, especially since it appears only in a footnote, should be narrowly construed in the interest of maintaining comity between the federal government and the states and keeping federal jurisdiction within the limits prescribed by Congress.

But the plaintiffs are wrong to argue that if their suit, if reconceived as a federal suit, is so plainly barred by *Illinois Brick* as to be frivolous, this would mean that it could not be removed to federal court because federal courts lack jurisdiction over frivolous federal claims. It is quite true that a case can be so utterly lacking in merit that the proper disposition of it is dismissal under Rule 12(b)(1) of the civil rules (lack of subject-matter jurisdiction) rather than under Rule 12(b)(6) (failure to state a claim). See, e.g., *Hagans v. Lavine*, 415 U.S. 528, 536-37 (1974); *Korzen v. Local Union 705*, 75 F.3d 285, 289 (7th Cir. 1996). But it would be a considerable paradox if, the less merit a claim had, the more opportunity

the plaintiff would have to restart the suit in another court. *Moitie* bars plaintiffs in hopeless federal cases from staving off the evil day of dismissal by shifting the case into a state court that may be confused about or even indifferent to the lack of merit of the case.

Although the issue must be considered a close one because of persisting uncertainty about the estimation of the amount in controversy in injunction cases and about the scope of the doctrine of artful pleading after *Moitie*'s footnote, we conclude that the motion to remand the Alabama suit should have been granted, and we move on to the question whether the wholesalers should have been dropped as defendants. Pretrial discovery included the taking of a thousand depositions and the production of *fifty million* pages of documents, and from this indigestible mass the plaintiffs have plucked a number of tasty morsels to garnish their briefs. We shall not extend this opinion with quotations. Suffice it to say that the record discloses a number of instances in which officers of the defendant wholesalers urge manufacturers to hold the line against discounting to pharmacies and their buying groups, and pledge to adhere to the chargeback system. The defendants argue that each of these "smoking guns" is susceptible of an innocent interpretation. But the issue before us is not whether the wholesalers were in fact participants in the price-fixing conspiracy; it is whether there is sufficient evidence of this to create a jury issue. In deciding this question we must construe the evidence as favorably to the plaintiffs as the record permits, not as favorably to the defendants as it permits. The defendants' interpretations may be correct; they are not inevitable.

But they argue, pointing to *Matsushita* and other decisions by the Supreme Court and this court, that summary judgment for a defendant is proper, even if there is some evidence of an antitrust violation, if the plaintiff's theory of violation makes no economic sense. *Matsushita Electric Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986); *Eastman Kodak Co. v. Image Technical Services, Inc.*, 504 U.S. 451,

467-69 (1992); *Reserve Supply Corp. v. Owens-Corning Fiberglas Corp.*, 971 F.2d 37, 49 (7th Cir. 1992); *Illinois Corporate Travel, Inc. v. American Airlines, Inc.*, 806 F.2d 722, 726 (7th Cir. 1986). This has to be the right rule, given the potential for jury confusion in litigation as enormous and esoteric as a billion-dollar antitrust damages action. The wholesalers argue that it would have been contrary to their economic self-interest for them to have joined a conspiracy that prevents them from selling at discounted prices to the pharmacies. The lower the price at which they sell to the pharmacies, the larger their volume of sales, and if their markup is unaffected this will translate into larger gross and probably net revenues.

But this misconceives the plaintiffs' theory of the wholesalers' violation. The theory is that the wholesalers were the manufacturers' cats-paws. There is nothing new about the idea that a cartel might "hire" a customer to help police the cartel. See Elizabeth Granitz & Benjamin Klein, "Monopolization by 'Raising Rivals' Costs': The Standard Oil Case," 39 *J. Law & Econ.* 1 (1996). The theory is especially plausible in the circumstances of the present case. (That doesn't mean it's correct; that's not the issue.) Drug wholesalers appear to be an endangered commercial species. Before the chargeback system was adopted, the manufacturers would often sell directly to hospitals, HMOs, and other favored customers, bypassing the wholesalers, since by selling directly they could monitor each customer's purchases and so try to identify instances in which a customer was purchasing for purposes of arbitrage rather than for its own use. The pharmacies were trying to get into the act by forming buying groups. Buying groups frequently act as their members' wholesaler, buying directly from the manufacturer and thus cutting out independent wholesalers. Desiring a piece of the action with the favored customers, who were proliferating, the wholesalers agreed to implement a chargeback system that would shore up the manufacturers' system of price discrimination, an integral component of the price-fixing conspiracy.

And desiring to discourage buying groups they joined with the manufacturers to hold the line against granting any discounts to such groups and so discourage their formation by reducing the advantages of membership.

The picture that we have just sketched may not be true, but there is enough evidence supporting it to preclude summary judgment; and our main point for the present is merely that the defendants are wrong to argue that it would make no sense for the wholesalers to conspire with them to fix the prices of pharmaceutical drugs. It would make perfectly good sense, and so the "smoking gun" evidence cannot be dismissed as being obviously misunderstood, empty boasting, or idle corporate gossip.

The wholesalers point to their wafer-thin profit margins. The margins might be even thinner if the wholesalers had refused to play their appointed role as agents of a manufacturers' cartel—in fact they might be out of business. And absence of monopoly profits is not inconsistent with monopoly (collusive or single-firm), since firms may transform monopoly profits into costs in their efforts to engross a larger share of them. The wholesalers point to instances in which they did engage in arbitrage, sought permission to give discounts to pharmacies, and even helped to organize buying groups of pharmacies. This evidence does not erase the factual question of whether the wholesalers joined the conspiracy. It is just evidence to be weighed in the balance by the trier of fact. There are inherent strains in a cartel. A member can do better by undercutting the cartel slightly and obtaining enormously increased volume at a slight sacrifice of unit profit than by honoring the cartel price and suffering an erosion of sales because of cheating by less scrupulous members. George J. Stigler, "A Theory of Oligopoly," in Stigler, *The Organization of Industry* 39 (1968). That is why cartels tend to collapse of their own weight. And if as the plaintiffs argue the wholesalers were tools of the manufacturers—reluctant accomplices, yet not the less liable for that, *Albrecht v. Herald Co.*, 390 U.S. 145, 150 n. 6 (1968); *United States v.*

Parke, Davis & Co., 362 U.S. 29, 45 (1960); *MCM Partners, Inc. v. Andrews-Bartlett & Associates, Inc.*, 62 F.3d 967, 973 (7th Cir. 1995), *Isaksen v. Vermont Castings, Inc.*, 825 F.2d 1158, 1163 (7th Cir. 1987), rather than principals—naturally they would be restive. As for the wholesalers' sponsorship of buying groups, it did not begin until after this litigation commenced, and may be strategic. And no significance can be attached to the fact that some of the wholesalers sued the manufacturers. *Illinois Brick* entitles them to do so. One virtue of the rule of that case is that it creates an incentive for middlemen to break out of a cartel and sue the supplier members; it sows dishonor among thieves; they still may *be* thieves.

The last issue is whether the district judge was right to carve DuPont Merck out of the manufacturers' conspiracy. A joint venture of DuPont and Merck, DuPont Merck was formed in 1991, two years after the beginning of the alleged conspiracy (or at least the earliest date within the statute of limitations), to take over DuPont's pharmaceuticals division, DuPont Pharma. Upon its formation, DuPont Merck announced that it was adopting a "single price" policy for DuPont Pharma's drugs, the drugs involved in this suit; it was withdrawing its discounts to hospitals and other favored customers and so abandoning its participation in the chargeback system. This *démarche* may seem irrelevant to whether DuPont Merck should be dismissed from the case. It is conceded to be the successor to DuPont Pharma, so that if DuPont Pharma was violating the Sherman Act between 1989 and 1991, DuPont Merck is liable under standard principles of successor liability even if it cleaned up its predecessor's act upon taking over. *Chaveriat v. Williams Pipe Line Co.*, 11 F.3d 1420, 1424-25 (7th Cir. 1993). Moreover, the adoption of a single-price policy by terminating discounts is not the termination of the antitrust violation. The violation is not the discrimination. The discrimination is merely evidence of the violation. A cartel so powerful that it did not have to grant discounts to any customer would not be exonerated from

antitrust liability. All that the withdrawal of discounts would do in such a case would be to create an additional class of plaintiffs.

The significance of the single-price policy lies elsewhere—in DuPont Merck's extraordinary but not improper argument that it thumbed its nose at the manufacturers' cartel because it had sufficient monopoly power on its own to obtain higher profits by a unilateral pricing policy, namely that of giving no discounts to anyone. The proprietary drugs at issue in this case that DuPont Merck makes are only five in number and they include the famous anticoagulant Coumaden, which although its patent has expired is said to have no competition because doctors refuse to prescribe a generic or other substitute. The other four drugs are sufficiently comparable to Coumaden in point of uniqueness, according to DuPont Merck's submission, that it can make more money selling them all without any discounts even though it must lose some sales to the formerly favored customers.

This is not an absurd argument; it may for all we know be entirely sound; it is backed by evidence. But there is enough contrary evidence to preclude summary judgment. Before 1991, but within the period of the statute of limitations, DuPont Pharma had a two-price policy and a chargeback system to implement it, and it participated in the trade association meetings in which, if the plaintiffs' "smoking gun" evidence is credited—as it must be, in the present posture of the case—the conspiracy was hatched or nurtured. The withdrawal of the discounts is evidence that DuPont Merck believed that it had enough unilateral monopoly power to go its own way. But it is not conclusive evidence, and even if it were, it would be consistent with DuPont Pharma's not having shared the belief. We said that DuPont Merck is liable for its predecessor's antitrust violations and here we add that if DuPont Pharma is found to have participated in the conspiracy, DuPont Merck could not avoid liability even for the post-1991 conduct of the conspiracy, a conspiracy in which it was not (or so a jury might find) involved. A mere change of pol-

icy, a mere cessation of involvement, is not effective withdrawal from a conspiracy. To terminate one's liability for the continuing illegal acts of a conspiracy that one had joined, a withdrawing member must either report the conspiracy to the authorities or announce his withdrawal to his coconspirators. *United States v. United States Gypsum Co.*, 438 U.S. 422, 463-65 (1978); *United States v. Patel*, 879 F.2d 292, 294 (7th Cir. 1989); *United States v. Puma*, 937 F.2d 151, 158 (5th Cir. 1991). So far as appears, DuPont Merck did neither.

The four rulings appealed from are thus

REVERSED.

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

May 9, 1997

No. 94 C 897
Charles P. Kocoras, *Judge*.

IN RE: BRAND NAME PRESCRIPTION DRUGS
ANTITRUST LITIGATION

Nos. 96-2814, 96-2458, 96-2485 & 96-8096

Appeals from the United States District Court for the Northern District of Illinois, Eastern Division.

By the Court:

The Court, on its own motion, consolidates appeal number 96-2814 with appeal numbers 96-8096, 96-2458 and 96-2485 for the purposes of briefing and disposition. The Court will modify this order to substitute the case number for the interlocutory appeal when it is transferred from the court's miscellaneous docket. The parties-in-interest in appeal number 96-2814 shall file one consolidated main brief on or before May 23, 1997, one consolidated response brief on or before June 9, 1997, and one consolidated reply brief on or before June 17, 1997. Briefing shall be limited to the following issue:

In a private action under Section 1 of the Sherman Act, 15 U.S.C. § 1, and Section 4 of the Clayton Act, 15 U.S.C. § 15, whether the *Illinois Brick* doctrine bars price-fixing damage claims of indirect purchaser-retailers against manufacturers on the indirect purchaser-retailers' purchases from wholesalers, which are separate companies neither owned by any manufacturer nor co-conspirators of any manufacturer?

The parties-in-interest in appeal number 96-8096 shall file one consolidated main brief on or before May 23, 1997, one consolidated response brief on or before June 9, 1997, and one consolidated reply brief on or before June 17, 1997. Briefing shall be limited to the following issues:

Whether the Alabama antitrust statute's penalty, codified at Ala. Code § 6-5-60(a), may be aggregated to satisfy the amount in controversy requirement of 28 U.S.C. § 1332(a)?; and,

Whether federal question jurisdiction exists in this case under the artful pleading doctrine?

The appellants in appeal numbers 96-2458 and 96-2485 shall file one consolidated main brief on or before May 23, 1997. Appellees in appeal number 96-2458 and appellee in appeal number 96-2485 are encouraged but not required to file a consolidated brief, or separate briefs, on or before June 9, 1997. If separate briefs are filed counsel must ensure that the briefs are not duplicative. Appellants in appeal numbers 96-2458 and 96-2485 shall file one consolidated reply brief on or before June 17, 1997.

No extensions of time will be granted. All briefs must be filed by 4:00 p.m. on the day that they are set to be filed and must be served by hand or overnight delivery. Oral argument in these consolidated appeals will be heard sometime during the month of June if the Court determines that oral argument is necessary.

Note: The parties are advised that Rule 26(c), Federal Rules of Appellate Procedure, which allows for three additional days after service by mail, shall not apply when the due dates of briefs are specifically set by order of this court. All briefs are due by the dates ordered.

Note: New Circuit Rule 31(e) became effective January 1, 1997. The rule is as follows:

> *Digital Media.* One copy of each brief must be filed on digital media. The disk must contain nothing more than the text of the brief, and the label of the disk must include the case name and docket number. One copy of the disk must be served on each party separately represented by counsel. Filing and service under this subsection are not required if counsel certifies that the text of the brief is not available on digital media.

Attorneys filing briefs after January 1, 1997 must comply with the new rule. Although any word processing format is allowed under the rule, WordPerfect 5.1 or greater and/or a generic format such as ASCII is preferred. Indicating on the label which brief is being filed, (i.e. appellant's brief, appellee's brief, appellant's reply brief, etc.) and what word processing format the file is in is also preferred. Briefs tendered *by counsel* after January 1, 1997 without a computer disk copy or certification that the text is not available on digital media may be rejected by the clerk's office.

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

July 8, 1996
MDL 287

Before

Hon. RICHARD A. POSNER, *Chief Judge*
Hon. WILLIAM J. BAUER, *Circuit Judge*
Hon. MICHAEL S. KANNE, *Circuit Judge*

IN RE: BRAND NAME PRESCRIPTION DRUGS
ANTITRUST LITIGATION
No. 96-8018

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION.

CHARLES P. KOCORAS, JUDGE.

The following are before the court:

1. PETITION FOR PERMISSION TO APPEAL UNDER 28 U.S.C. § 1292(B), filed on May 28, 1996, by counsel.

2. INDIVIDUAL PLAINTIFFS' ANSWER TO DEFENDANTS' PETITION FOR PERMISSION TO APPEAL UNDER 28 U.S.C. § 1292(B), filed on June 4, 1996, by counsel.

3. CLASS PLAINTIFFS' ANSWER TO THE MANUFACTURER DEFENDANTS' PETITION FOR PERMISSION TO APPEAL UNDER 28 U.S.C. § 1292(B), filed on June 4, 1996, by counsel.

4. SUPPLEMENTAL ANSWER TO THE PETITION FOR PERMISSION TO APPEAL UNDER 28 U.S.C. § 1292(B), filed on June 4, 1996, by counsel.

IT IS ORDERED that #1 is GRANTED. Once this court receives notice from the district court that the docketing fee has been paid, the appeal will be entered on the court's general docket pursuant to Federal Rule of Appellate Procedure 5(d).

To the extent that individual plaintiffs seek to dismiss any appeal from the judgment in favor of the wholesalers, which was certified pursuant to Rule 54(b), the request is DENIED without prejudice as it cannot be presented to the court in connection with its consideration of this § 1292(b) petition.

To the extent that certain individual plaintiffs seek amendment of the certified question (see #4), the request is DENIED as unnecessary. *See, e.g., Edwardsville Nat'l Bank & Trust Co. v. Marion Laboratories, Inc.*, 808 f.2d 648, 650 (7th Cir. 1987) (§ 1292(b) appeal brings up entire certified order for review).

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

94 C 897
MDL 997

IN RE: BRAND NAME PRESCRIPTION DRUGS
ANTITRUST LITIGATION

This Document Relates to:
ALL CASES

MEMORANDUM OPINION

CHARLES P. KOCORAS, *District Judge*:

On April 4, 1996, this court issued two Memorandum Opinions in this massive multi-district litigation. In the first opinion, the court denied all summary judgment motions by the Manufacturer Defendants (regarding both the conspiracy allegations and the indirect purchaser claims) and granted summary judgment in favor of the Wholesalers Defendants. In the second opinion, the court rejected proposed partial settlements between the Class Plaintiffs and several of the manufacturers (the "Settling Defendants"). Recognizing the impact which such decisions carried as to the future course of the litigation, the court, at a status hearing which followed the issuance of the two opinions, expressed to the parties a will-

ingness to entertain questions which might merit certification for immediate interlocutory appeal. Presently before the court are the products of the court's inquiry.

For the reasons set forth below, the Manufacturer Defendants' motion for certification of interlocutory appeal with regards to the indirect purchaser claims is granted pursuant to 28 U.S.C. 1292(b). The Wholesaler Defendants' motion for entry of final judgment pursuant to Rule 54(b) of the Federal Rules of Civil Procedure is similarly granted. The defendants' request to certify or reconsider our April 4, 1996 decision rejecting the proposed partial settlements is denied.

A. Manufacturer Defendants' Motion for Certification of Interlocutory Appeal from Order Denying Motions for Summary Judgment as to Indirect Purchaser Claims

In *Illinois Brick v. Illinois*, 431 U.S. 720 (1977), the Supreme Court barred an "indirect purchaser" from seeking damages for illegal overcharges passed on to it by intermediates who purchase directly from the manufacturers. *Illinois Brick*, 431 U.S. at 746. On April 4, 1996, following an examination of the immense record before it, this court revisited the issue of *Illinois Brick* and held that the control which the manufacturers exercised over the wholesalers and any of its "indirect purchaser" transactions effectively transformed those transactions into one sale. Finding that the policies and rationales behind the so-called "indirect purchaser rule" of *Illinois Brick* were not implicated in the present case, the court denied the Manufacturer Defendants' motions for summary judgment on the indirect purchaser issue, holding that the bar imposed by *Illinois Brick* had no application to the plaintiffs' Sherman Act claims.

A significant feature of the instant cases involves denial of certain discounts by manufacturers to members of the plaintiff class while the manufacturers directly negotiate these same discounts with other customers of the wholesalers. Because of the non-involvement of the wholesalers in the negotiations and decisions to discount or not discount to cus-

tomers of the wholesalers, the phrase "indirect purchaser" is somewhat misleading. When a manufacturer makes a decision which materially affects the price a customer will pay to the wholesaler supplier and deals directly with that customer, either by way of granting the discount or denying it, the manufacturer intrudes itself in the sales transaction. Consequently, one of the significant components of the sales transaction between wholesaler and customer is decreed by the manufacturer, and there is nothing indirect about this aspect of the sales/purchase transaction.

Pursuant to 28 U.S.C. § 1292(b), the Manufacturer Defendants now seek to certify the *Illinois Brick* matter for interlocutory appeal. Specifically, the Manufacturer Defendants seek certification of the following question:

> In a private action under Section 1 of the Sherman Act, 15 U.S.C. § 1, and Section 4 of the Clayton Act, 15 U.S.C. § 15, whether the *Illinois Brick* doctrine bars price-fixing damage claims of indirect purchaser retailers against manufacturers on the indirect purchaser-retailers' purchases from wholesalers, which are separate companies neither owned by any manufacturer nor co-conspirators of any manufacturer?

For the reasons set forth below, we grant the defendants' motion and certify the posited question for interlocutory appeal.

A district court possesses the authority to certify an order for interlocutory appeal where that order involves (1) a controlling question of law as to which (2) there is a substantial ground for difference of opinion, and (3) an immediate appeal may materially advance the ultimate termination of the litigation. 28 U.S.C. § 1292(b). The Manufacturer Defendants maintain that the proper application of *Illinois Brick* concerns each of these factors. We agree.

Regarding the issue of whether a matter involves a controlling question of law, the Seventh Circuit has acknowledged that "a growing number of decisions have accepted the

rule that a question is controlling, even though its decision might not lead to reversal on appeal, if interlocutory reversal might save time for the district court, and time and expense for the litigants." *Johnson*, 930 F.2d at 1206 (quoting 16 Charles A. Wright, Arthur R. Miller, Edward H. Cooper & Eugene Gressman, *Federal Practice and Procedure* § 3930, at pp. 159-60 (footnote omitted)). In light of this observation, the Seventh Circuit has endorsed a flexible standard, stating that "'controlling' means serious to the conduct of the litigation, either practically or legally." *Johnson v. Burken*, 930 F.2d 1202, 1206 (7th Cir. 1991) (quoting *Katz v. Carte Blanche Corp.*, 496 F.2d 747, 755 (3d Cir. 1974), *cert. denied*, 419 U.S. 885 (1974)).

Although the plaintiffs maintain that *Illinois Brick* is "just a damage issue" such that it could be separated and would not meaningfully affect the determination of liability at trial, the plaintiffs oversimplify the significance of *Illinois Brick*. As discussed more fully below, the applicability of *Illinois Brick* has a profound impact upon the scope of the plaintiffs' Sherman Act claims. For purposes of § 1292(b), a question is not *un*controlling merely because it does not dispose of a case. In cases of this magnitude, "the proper measure of damages is always a controlling question of law." *In re Uranium Antitrust Litigation*, 556 F.Supp. 806, 808 (N.D.Ill. 1983). The proper applicability of *Illinois Brick* in this action is no different.

We further believe that the indirect purchaser issue posed by *Illinois Brick* is an issue as to which there is a substantial ground for difference of opinion. In our April 4, 1996 opinion, we stated that the degree of control exercised by the manufacturers effectively transformed the transaction, i.e., from defendant to middleman to indirect purchaser, into one sale. As such, the policy concerns of *Illinois Brick* were not implicated, and the rule barring indirect purchasers did not apply.

In *Illinois Brick*, the Supreme Court expressly recognized a "control" exception to the indirect purchaser rule. *See Illi-*

nois Brick, 431 U.S. at 736 n.16. The true scope of the exception's application, however, has never been crystallized. Where the direct purchaser is a subsidiary or is otherwise owned by the alleged violator, the application of the control exception is clear; and it is in this ownership scenario where the control exception has been most often utilized. *See, e.g., In re Sugar Indus. Antitrust Litig.*, 579 F.2d 13 (3d Cir. 1978). In articulating the control exception to *Illinois Brick*, however, the Supreme Court indicated that the exception applied to situations where a direct purchaser is not only owned, but "owned *or controlled*" by the alleged wrongdoer. *Illinois Brick*, 431 U.S. at 736 n.16 (emphasis added). The Supreme Court reasoned that where such ownership *or* control is exercised, the policies behind *Illinois Brick* are not implicated and have no application.

We believe that the circumstances of the present case fully embrace the spirit of the control exception articulated by the Supreme Court. We are mindful, however, that this case is unlike any other in which the courts have applied the control exception and that the true scope of the control exception has yet to be fully explored. For purposes of 28 U.S.C. 1292(b), it is clear that a substantial ground for difference of opinion exists concerning the applicability of *Illinois Brick* in the present litigation. The first two requirements for certification under section 1292(b) are thus easily satisfied.

The third requirement of section 1292(b), i.e., that immediate appeal may materially advance the ultimate termination of the litigation, is perhaps the most hotly contested, for an interlocutory appeal of the indirect purchaser issue would not result in the dismissal of any parties to the action, nor would it fully dispose of any claims. The plaintiffs attest that between ten and twenty percent of their purchases were made *directly* from manufacturers. The viability of these direct damages claims thus would not hinge upon the ultimate applicability of *Illinois Brick*. Likewise, no manufacturer would be released from the action by virtue of a reversal on the indirect purchaser issue. An antitrust defendant remains jointly and

severally liable for the acts of its co-conspirators. *See In re Uranium Antitrust Litigation*, 552 F.Supp. 518, 522 (N.D.Ill. 1982). Given the potential for liability as co-conspirators, even as to those select manufacturers who conducted transactions exclusively through the use of wholesalers, Sherman Act claims would remain. A trial as to all of the defendants would also be required on the plaintiffs' asserted claims for injunctive relief. *See In re Beef Industry Antitrust Litigation*, 600 F.2d 1148, 1167 (5th Cir. 1979) (concluding that *Illinois Brick* does not bar suits for injunctive relief by indirect purchasers). An interlocutory appeal as to the indirect purchaser issue thus would not obviate the necessity of a Sherman Act trial.

Section 1292(b), however, does not require that an issue be outcome determinative in order for an interlocutory appeal to be proper. Rather, section 1292(b) requires only that an immediate appeal may materially advance the ultimate termination of the litigation. 28 U.S.C. § 1292(b). Notwithstanding the plaintiffs' arguments to the contrary, a reversal by the Seventh Circuit of the *Illinois Brick* issue would result in a substantial savings of both judicial and party resources. The magnitude of the plaintiffs' damages claims would be vastly diminished—estimates vary, but between eighty to ninety percent of the plaintiff's damages claims are directly affected by the applicability of *Illinois Brick*. In addition, the relevance and propriety of certain (often sensitive) information, e.g., prescription drug sales by defendants not selling directly to retailers, would be greatly influenced by the final applicability of *Illinois Brick*.

Were appellate review of the indirect purchaser issue to be deferred to the end of the litigation and the *Illinois Brick* issue to be subsequently reversed, a strong possibility of retrial on the Sherman Act claims would be needlessly created. The Seventh Circuit has expressly recognized the desirability of avoiding a trial that "could prove to be a useless exercise." *In re Uranium Antitrust Litig.*, 617 F.2d 1248, 1262 (7th Cir. 1980). Given the enormity of the present litigation

and the time, energy, and expense which a full trial will entail, the elimination of the need for retrial is extremely agreeable. An interlocutory determination as to the indirect purchaser issue, *along with a determination regarding the proper role of the wholesalers in any conspiracy* (*see infra* at Section B), would obviate the necessity for relitigating any portion of the Sherman Act claims. As such, we find that the third requirement of section 1292(b) has been satisfied. The ultimate termination of the litigation may certainly be advanced by an immediate appeal on the indirect purchaser question.[1]

Although the circumstances surrounding the certification vary, it is significant that other courts, including the Seventh Circuit, have recognized that questions concerning the application of *Illinois Brick* are particularly suitable for review on interlocutory appeal. *See Illinois ex rel. Hartigan v. Panhandle Eastern Pipe Line Co.*, 852 F.2d 891, 892 (7th Cir. 1988) (*en banc*) ("*Panhandle I*"), *cert. denied*, 488 U.S. 986 (1988), *overruled on other grounds*, *Illinois ex rel. Burris v. Panhandle E. Pipe Line Co.*, 935 F.2d 1469 (7th Cir. 1991) ("*Panhandle II*"), *cert. denied*, 502 U.S. 1094 (1992); *see also In re Wyoming Tight Sands Antitrust Cases*, 866 F.2d 1286 (10th Cir. 1989), *aff'd sub nom*, *Kansas v. Utilicorp United Inc.*, 497 U.S. 199 (1990); *Link v. Mercedes-Benz of North America, Inc.*, 788 F.2d 918 (3d Cir. 1986). Because we

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[1] In its earlier § 1292(b) ruling, *see In re Brand Name Prescription Antitrust Litigation*, 878 F.Supp. 1078 (N.D.Ill. 1995), the court reasoned that, even in the event of reversal, immediate appeal would not materially advance the ultimate termination of the litigation on the ground that the Robinson-Patman Act damage claims would have to be determined in the same proceeding, thus reducing the efficiencies that could have been achieved by dismissal of the Sherman Act damage claims on the plaintiffs' purchases from wholesalers. However, this is no longer the situation. Under Pretrial Order No. 5 and the court's scheduling orders, the Robinson-Patman Act claims have been deferred pending resolution of the Sherman Act claims. As a result, simplification of the Sherman Act claims would not only vastly reduce the complexity of trial of those claims, but also, by doing so, hasten the adjudication of the now separately tracked Robinson-Patman Act claims.

believe that the indirect purchaser question in the present case involves a controlling question of law as to which there is a substantial ground for a difference of opinion and that an immediate appeal may materially advance the ultimate termination of the litigation, the Manufacturer Defendants' motion for interlocutory review pursuant to 28 U.S.C. § 1292(b) is granted.

B. Wholesaler Defendants Motion for Entry of Final Judgment

On April 4, 1996, this court granted the Wholesaler Defendants' motions for summary judgment. The Wholesaler Defendants now move for entry of final judgment pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.[2] Although, customarily, a final judgment will not be entered by a trial court on an adjudicated claim until the court has resolved all of the issues between all of the parties, the Federal Rules provide for considerable discretion as to such matters. As recognized by the Supreme Court:

> The liberalization of our practice to allow more issues and parties to be joined in one action and to expand the privilege of intervention by those not originally parties has increased the danger of hardship and denial of justice through delay if each issue must await the determination of all issues as to all parties before a final judgment can be had. In recognition of this difficulty, . . . Rule 54(b) . . . was promulgated.

Bank of Lincolnwood v. Federal Leasing. Inc., 622 F.2d 944, 947 (7th Cir. 1980) (quoting *Dickinson v. Petroleum Conversion Corp.*, 338 U.S. 507, 511-12 (1950)).

Rule 54(b) of the Federal Rules of Civil Procedure provides that, where certain requirements are satisfied, a district court

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[2] The Wholesaler Defendants include: AmeriSource Corporation, Bergen Brunswig Corporation, Bindley Western Industries, Inc., Cardinal Health, Inc., FoxMeyer Drug Company, McKesson Corporation, and Whitmire Distribution Corporation.

possesses the power to render a final judgment as to a portion of a lawsuit. The requirements of the rule are easily stated:

> First, there must be an action involving multiple claims for relief or multiple parties. Second, there must be a final decision by the district court as to at least one claim or the rights and liabilities of at least one of the parties. Third, the district court must make "an express determination that there is no just reason for delay." Finally, the court must expressly direct the entry of judgment (citations omitted).

Bank of Lincolnwood, 622 F.2d at 947; *See* Fed. R. Civ. P. 54(b).

In granting summary judgment in favor of the wholesalers, the court noted that "[t]here is no evidence, direct or circumstantial, in the entirety of [the] massive record that the wholesalers had any involvement in the decisions not to afford discounts to the plaintiffs." Memorandum Opinion at 47-48. Having so found, the wholesalers were dismissed from the case, and the legal posture of the litigation was profoundly altered.

Without entry of final judgment at the present time, the specter of a second trial would loom should the decision on the wholesalers' summary judgment motion be reversed. More significant, however, is the interplay between the ultimate fate of the wholesalers and the court's ruling on the manufacturers' *Illinois Brick* indirect purchaser motion for summary judgment (the indirect purchaser issue has been postured for interlocutory certification pursuant to 28 U.S.C. § 1292(b)). As explained above, final determination of the *Illinois Brick* issue has potentially dramatic implications as to the final contours of this action. Furthermore, any consideration of the *Illinois Brick* issue by the Seventh Circuit would necessarily merit consideration of the wholesalers' role in the sale and distribution of brand name prescription drugs. Because the status of the wholesalers is central to the *Illinois Brick* argument, principles of judicial economy and consistency favor the consideration of the matters at the same time.

We are mindful of the plaintiffs' concerns as to the delay which might be caused by an appeal. However, given the enormous ramifications of the *Illinois Brick* issue upon the course of the trial and the role which the fate of the wholesalers ultimately assumes in the determination of the *Illinois Brick* issue, entry of final judgment for the Wholesaler Defendants at the present time appears appropriate. Because we find no just reason for delay, the Wholesaler Defendants' motion for entry of final judgment is granted.

C. Defendants' Motion for Certification, or in the Alternative, Reconsideration of the Court's April 4, 1996 Order Denying Approval of the Settlements

The defendants' motion for certification or reconsideration of the April 4, 1996 order denying approval of the proposed partial settlements with the Class Plaintiffs was denied in court on May 8, 1996. At that time, the court preliminarily approved an amendment to the earlier settlement agreements which purported to rectify the inequities which were cited in the April 4, 1996 order. Given the existence of the new settlement agreements and our continued belief that the rejection of the initial settlements was not immediately appealable, we denied the defendants' motion for certification or reconsideration in court. We adhere to that previous judgment.

CONCLUSION

For the reasons set forth above, the Manufacturer Defendants' motion for certification of interlocutory appeal with regards to the indirect purchaser claims is granted. The Wholesaler Defendants' motion for entry of final judgment is also granted. All other motions are denied.

/s/ CHARLES P. KOCORAS
Charles P. Kocoras
United States District Judge

Dated: May 16, 1996

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

94 C 897
MDL 997

IN RE: BRAND NAME PRESCRIPTION DRUGS
ANTITRUST LITIGATION

This Document Relates to:
ALL CASES

MEMORANDUM OPINION

CHARLES P. KOCORAS, *District Judge*:

This matter is before the Court on numerous motions for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure. For the reasons that follow, the Manufacturer Defendants' motions are denied. The Wholesaler Defendants' motions are granted.

BACKGROUND

Tens of thousands of retail pharmacies, ranging in size from individual, small pharmacies to large, multi-state chains, comprise the plaintiffs of the various actions consolidated[1] before

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[1] Hundreds of cases involving thousands of retail pharmacy plaintiffs alleging industry-wide antitrust violations have been filed throughout the country. Approximately two years ago, these actions were

us. Virtually all of the leading manufacturers and wholesalers of brand name prescription drugs are the defendants in this multi-district antitrust litigation. The plaintiffs have polarized into two identifiable groups. On behalf of a nation-wide class[2], the "Class Plaintiffs" allege a price-fixing conspiracy, in which the defendants agreed to eliminate price competition and to keep prices of "Prescription Brand Name Drugs"[3] artificially high to retail pharmacies in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. The other group of plaintiffs consists of thousands of independent pharmacies, drug store chains and grocery store chains who have chosen to opt out of the class and pursue their own individual claims. In addition to alleging Sherman Act conspiracy violations, these opt out plaintiffs, known collectively as the "Individual Plaintiffs", assert price discrimination claims pursuant to the Robinson-Patman Act, 15 U.S.C. §§ 13(a), (d) and (f).[4]

The gravamen of both groups of plaintiffs' Sherman Act claims is that the defendants have collusively created and maintained a dual pricing system that raises or stabilizes the prices paid for brand name prescription drugs by retail phar-

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transferred to this Court by the Judicial Panel on Multidistrict Litigation for coordinated or consolidated pretrial proceedings.

[2] The plaintiff class is defined as follows:

All persons and entities in the United States who, at any time during the period from October 15, 1989, to the present, purchase or purchased prescription brand name drugs directly from any of the defendants. The class excludes defendants; other manufacturers of prescription brand name drugs; other wholesalers of prescription brand name drugs; co-conspirators of any of the foregoing entities; affiliates, parents, and subsidiaries of any of the foregoing entities; governmental entities; mail order pharmacies; health maintenance organizations; hospitals; clinics; and nursing homes.

[3] As defined in ¶ 3(h) of the Consolidated and Amended Class Action Complaint, "Prescription Brand Name Drugs" are "drugs that are sold under the brand name of the Manufacturer rather than the drug's generic name."

[4] The Individual Plaintiffs' Robinson-Patman Act claims are not subject to this motion.

macies. To accomplish this goal, the defendants have, *inter alia,* refused to make available to community pharmacies various discounts, rebates, and other price-lowering mechanisms that each of the Manufacturer Defendants has made available to "institutional" or "managed care"[5] buyers.

Plaintiffs' antitrust allegations arise out of series of agreements and understandings which, plaintiffs contend, established a cartel involving both pharmaceutical drug manufacturers and drug wholesalers, including the 24 Manufacturer Defendants[6] and the 7 Wholesaler Defendants named in this litigation. The purpose of the alleged cartel was to keep the prices at which brand name prescription drugs were sold to retail pharmacies at artificially high levels. Although it is not clear exactly when this cartel was allegedly formed, the plaintiffs claim that the agreements and understandings at issue date back at least as far as the early 1980s.

The emergence of the cartel was allegedly premised upon certain changes in the health care environment and marketplace in the 1970s. According to the plaintiffs, in the early part of that decade, certain of the Manufacturer Defendants responded to pressure from for-profit hospitals and other traditional health care institutions for discounts off of the pub-

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[5] Managed care is a term that refers to Health Maintenance Organizations ("HMOs"), health insurers or managers of employer health plans.

[6] As a result of a settlement agreement which we preliminarily approved on February 15, 1996 the Class Plaintiffs' action has been stayed as to the following settling Manufacturer Defendants: Abbott Laboratories ("Abbott"); American Cyanamid Company ("Cyanamid"); American Home Products Corporation ("AHP"); Bristol-Myers Squibb Company ("BMS"); Burroughs Wellcome Co. ("BW Co.") (now merged into Glaxo Wellcome Inc.); Ciba Geigy Corporation ("Ciba"); Eli Lilly and Company ("Lilly"); Glaxo Inc. ("Glaxo") (now merged into Glaxo Wellcome Inc.); Knoll Pharmaceutical Company ("Knoll"); Merck & Co., Inc. ("Merck"); Pfizer Inc. ("Pfizer"); Schering-Plough Corporation (and Schering Corporation) ("Schering"); SmithKline Beecham Corporation ("SB"), Warner-Lambert Company ("W-L Co.") and Zeneca Inc. ("Zeneca").

lished wholesale price of drugs.[7] The defendants' discounting practices allegedly began to proliferate in the 1970s with the advent of non-traditional managed care organizations and other re-sellers of drugs, such as mail order houses. According to the plaintiffs, despite their efforts to negotiate with the defendants, retail pharmacies, both chain and independent alike, have been denied similar discounts afforded to managed care entities and mail order houses—the so-called "favored purchasers." Allegedly, as a matter of policy, the Manufacturer Defendants even refuse to discuss the issue of discounts to retail pharmacies.

Based primarily on the Manufacturer Defendants' refusal to discount to the retail sector of the industry, the plaintiffs allege widespread Sherman Act violations, arguing that the Manufacturer Defendants and the Wholesaler Defendants, by foreclosing the plaintiffs' access to discounts offered to favored purchasers, entered into a unitary conspiracy to keep the prices paid by retail pharmacies artificially high. The participation of the Wholesaler Defendants in the alleged conspiracy is premised upon the wholesalers' purported agreement to set up an industry-wide system to facilitate the structure of differential pricing necessary to prevent discounting to retail pharmacies. According to the plaintiffs, this system—known as the "chargeback system"—was developed and maintained for the explicit purpose of preventing the retail pharmacies from obtaining discounts, and for preventing "arbitrage" or "diversion"[8].

Under the chargeback system, a discounted contract price is negotiated by the manufacturer and the favored purchaser.

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[7] The "discounts" in issue in this litigation are discounts off of the published wholesale price of the drug involved. Other discounting practices in the industry, such as discounts for cash or prompt payment, are not implicated in this case.

[8] "Arbitrage" refers to the simultaneous purchase in one market and sale in another of a security or commodity in hope of making a profit on price differences in the different markets. "Diversion" refers to the turning aside or alteration of a natural course or route.

If the "discounted" prescription drugs are supplied out of a wholesaler's inventory, the wholesaler delivers the product to the favored purchaser at the discounted price and then "charges back" the manufacturer for the difference between the price paid by the wholesaler and the lower price at which it was delivered. According to the plaintiffs, this chargeback system is integral to the success of the alleged conspiracy. The plaintiffs further maintain that the Wholesaler Defendants encouraged a two-tier pricing system, under which the retail pharmacy plaintiffs paid artificially high prices for brand name drugs.

The Manufacturer and Wholesaler Defendants dispute at length the plaintiffs' allegations, arguing that there exists no evidence of collusive or parallel conduct. In support, the Manufacturer Defendants assert that each manufacturer's discounting and pricing decisions were independently made and that the manufacturers' individual responses to both the managed care entities and the retail pharmacies' respective requests for discounts have not been uniform.

The Manufacturer Defendants further argue that to the extent that the retail pharmacy plaintiffs are denied discounts afforded to managed care and other institutional buyers, there is an economically sound reason for the disparity. In support, the defendants cite to the power of these groups to affect market share. According to the defendants, most managed care organizations have created "formularies," i.e., restrictive lists of drugs under which their physicians are directed to prescribe. The defendants argue that managed care organizations use formularies and the ability to control access to patient populations to negotiate discounts or rebates from pharmaceutical manufacturers. *See* Defendants' Joint 12(m) at ¶ 25, 37. Essentially, it is the Manufacturer Defendants' position that, by threatening to exclude the manufacturer's products from their respective formularies unless the manufacturer agrees to a discount or rebate, managed care organizations possess the market power to negotiate discounts from a drug manufacturer. The defendants further argue that, unlike man-

aged care, retail pharmacies simply do not possess the same market power, or the same power over the prescribing decision, which managed care possesses.

With respect to the plaintiffs' claims against the wholesalers, the Wholesaler Defendants contend that their participation, as alleged by the plaintiffs, is completely implausible. According to the wholesalers, not only has their conduct been innocent, but at times it has been wholly antithetical to the alleged conspiracy. Even if there existed a *manufacturer* conspiracy to deny discounts to the plaintiffs, the wholesalers maintain that their participation was completely unnecessary.

The plaintiffs contest the defendants' positions in their entirety. The plaintiffs not only take issue with the degree of market power that the Manufacturer Defendants ascribe to managed care organizations, the plaintiffs also dispute the Manufacturers' claims that retail pharmacies cannot affect market share.

Presently before us are numerous summary judgment motions—twenty-six in all—attacking all plaintiffs' Sherman Act claims. First, each of the 24 named Manufacturer Defendants[9] moves individually for summary judgment in its favor based on the plaintiffs' failure to meet its burden of proof. Next, the 7 Wholesaler Defendants collectively move for summary judgment. Finally, the Manufacturer Defendants collectively move for judgment in their favor on the plaintiffs' indirect purchaser claims.

Each of these motions will be addressed below. Before proceeding, however, we first examine the legal principles from which to judge a motion for summary judgment.

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[9] Due to the pending settlement agreement, Class Plaintiffs' filings pertain only to the non-settling Manufacturer Defendants. The Individual Plaintiffs, who are not party to any settlement agreement, address the Sherman Act summary judgment motions of all of the Manufacturer Defendants.

LEGAL STANDARD

Summary judgment is appropriate if the pleadings, answers to interrogatories, admissions, affidavits and other materials show "that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." Fed. R.Civ. P. 56(b). "Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). The party seeking summary judgment carries the initial burden of showing that no such issue of material fact exists. Pursuant to Rule 56(b), when a properly supported motion for summary judgment is made, the adverse party must set forth specific facts showing that there is a genuine issue as to any material fact and that the moving party is not entitled to judgment as a matter of law. *Anderson*, 477 U.S. at 250.

Although the general rule is that all reasonable inferences are drawn in favor of the non-moving party, antitrust law limits the extent to which permissible inferences from ambiguous evidence may be drawn in a Section 1 Sherman Act case. *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 415 U.S. 574, 588 (1986); *Wigod v. Chicago Mercantile Exchange*, 981 F.2d 1510, 1514 (7th Cir. 1992); *Valley Liquors, Inc. v. Renfield Importers, Ltd*, 822 F.2d 656 (7th Cir. 1987), *cert. denied*, 484 U.S. 977 (1987). Specifically, "conduct as consistent with permissible competition as with illegal conspiracy does not, standing alone, support an inference of antitrust conspiracy." *Matsushita*, 475 U.S. at 588 *(citing Monsanto Co. v. Spray-Rite Service Corp.*, 465 U.S. 752, 764 (1984)). This, however, does not mean that a defendant in an antitrust case may prevail on summary judgment simply by enunciating *any* economic theory supporting its behavior. *Eastman Kodak Co. v. Image Technical Servs., Inc.*, 504 U.S. 451, 468 (1992). Rather, it simply means that the range of permissible inferences is limited when a plaintiff asks a court to infer a price-fixing conspiracy from normal

business activity that, standing alone, is consistent with lawful competition.

The United States Supreme Court has cautioned that "summary procedures should be used sparingly in complex antitrust litigation where motive and intent play leading roles, the proof is largely in the hands of the alleged conspirators, and hostile witnesses thicken the plot." *Poller v. Columbia Broadcasting*, 368 U.S. 464, 473 (1962). The Supreme Court's warning, however, does not mandate the trial of cases where the cause of action alleged is substantively deficient. Rather, as the Seventh Circuit notes "despite its sweeping language, *Poller* and its progeny simply stand for the proposition that, if a claim under the antitrust laws has been adequately set forth . . . , the highly factual and subjective questions of intent and purpose should be resolved after discovery and trial." *National Org. for Women v. Scheidler*, 968 F.2d 612, 617 (7th Cir. 1992), *rev'd on other grounds*, 114 S.Ct. 798 (1994) (citations and quotation marks omitted). Where the record is clear that the antitrust claims cannot succeed, then judicial administration is better served by disposition prior to trial. *Wigod v. Chicago Mercantile Exchange*, 981 F.2d 1510 (7th Cir. 1992) (*citing Collins v. Associated Pathologists, Ltd.*, 844 F.2d 473, 475 (7th Cir. 1988), *cert. denied*, 488 U.S. 852 (1988), and *Lupia v. Stella D'Oro Biscuit Co.*, 586 F.2d 1163 (7th Cir. 1978), *cert. denied*, 440 U.S. 982 (1979)).

As applied to a Section 1 Sherman Act claim, the summary judgment standard has, over the years, evolved and has taken on certain subtleties. To establish a Sherman Act violation, the plaintiffs must "present direct or circumstantial evidence that reasonably tends to prove that the defendants had a conscious commitment to a common scheme designed to achieve an unlawful objective." *Monsanto Co. v. Spray-Rite Service Corp.*, 465 U.S. 752, 764 (1984) (citations and internal quotation marks omitted).

Where a plaintiff relies on circumstantial evidence, the plaintiff "must show that the inference of conspiracy is reasonable in light of the competing inference[ ] of independent action." *Matsushita*, 475 U.S. at 588. The Seventh Circuit sets

forth the approach for evaluating the legal sufficiency of the evidence in an antitrust conspiracy case as follows:

> We first review the evidence of conspiracy submitted by the plaintiff. Next, we examine whether the defendants have offered evidence that tends to show that the conduct which forms the basis of the plaintiff's complaint is as compatible with the legitimate business activities of the plaintiff as it is with illegal conspiracy. Finally, if we determine that this analysis leaves the evidence of conspiracy ambiguous, we determine whether the plaintiff can point to any evidence that tends to exclude the possibility that the defendants were pursuing their legitimate independent interests.

Serfecz v. Jewel Food Stores, 67 F.3d 591, 599 (7th Cir. 1995) (*citing Market Force, Inc. v. Wauwatosa Realty Co.*, 906 F.2d 1167 (7th Cir. 1990)), *cert. denied*, — S.Ct. —, 1996 WL 89245 (U.S. March 4, 1996).

With these principles in mind, we turn to the motions before us.

DISCUSSION

I. The Legal Sufficiency of Plaintiffs' Evidence of an Overall Antitrust Conspiracy

The plaintiffs allege a "unitary" conspiracy among the Manufacturer Defendants and the Wholesaler Defendants, entered into for the purpose of fixing, raising, maintaining, and stabilizing the prices of prescription brand name drugs in violation of Section 1 of the Sherman Act. Central to the accomplishment of the objective of the alleged conspiracy was the establishment of an industry-wide system to facilitate a structure of differential pricing. Under this structure, the retail pharmacy plaintiffs were placed in a class of trade with which the Manufacturer Defendants would not, usually as a matter of policy, entertain or negotiate requests for discounts

off of the published wholesale prices of the brand name drugs involved. According to the plaintiffs, the purpose and effect of the conspiracy was to eliminate price competition and to keep prices of brand name prescription drugs artificially high to retail pharmacies in violation of Section 1 of the Sherman Act.

Section 1 of the Sherman Act prohibits the formation of any "contract, combination . . . or conspiracy in restraint of trade or commerce . . . ." 15 U.S.C. § 1. A civil plaintiff seeking recovery under Section 1 must allege and ultimately prove: "(1) a contract, combination, or conspiracy; (2) a resultant unreasonable restraint of trade in the relevant market; and (3) an accompanying injury." *Denny's Marina, Inc. v. Renfro Productions, Inc.*, 8 F.3d 1217, 1220 (7th Cir. 1993) (citations omitted). It is clear from all of the parties' submission that the first element—the element of concerted action—is the main element in dispute here.

What constitutes independent rather than collective behavior for purposes of the antitrust laws and what kind of evidence may be used to prove concerted action is addressed by the Sherman Act itself, as well as the federal cases interpreting the Act. Not surprisingly, direct evidence of an agreement to engage in anticompetitive conduct is not necessary to establish liability under the Sherman Act. *Contractor Utility Sales Co. v Certain-Teed Products Corp.*, 638 F.2d 1061, 1074 (7th Cir. 1981). This is so because, by its nature, a conspiracy is rarely susceptible to direct proof. Rather, proof of concerted action is most often "a matter of inference, apprehended and proven circumstantially." *Trist v. Federal Savings & Loan Ass'n*, 466 F.Supp. 578, 590 (E.D.Pa. 1979) (citations omitted). As the Supreme Court has explained, concerted action or a "unity of purpose" may be inferred from a course of dealing or from other circumstantial evidence:

> No formal agreement is necessary to constitute an unlawful conspiracy . . . . The essential combination or conspiracy in violation of the Sherman Act may be found in a course of dealings or other circumstances as well as in

> any exchange of words. Where the circumstances are such as to warrant a jury in finding that the conspirators had a unity of purpose or a common design and understanding, or a meeting of minds in an unlawful arrangement, the conclusion that a conspiracy is established is justified.

American Tobacco Co. v. United States, 328 U.S. 781, 809-10 (1946) (citations omitted).

Both the Class Plaintiffs and the Individual Plaintiffs claim that they have direct and circumstantial evidence of the alleged conspiracy. The Class Plaintiffs even boldly assert that their "direct" evidence, standing alone, would be sufficient to warrant a denial of the defendants' summary judgment motion.

The "direct" evidence to which both plaintiffs refer consists primarily of incriminating statements and observations made by various defendants and other members of the industry. It includes evidence that competing manufacturers and competing wholesalers held meetings, discussed pricing issues, and engaged in a pervasive exchange of trade and pricing information. While this evidence tends to show that various defendants engaged in collusive, anti-competitive conduct, it is not "direct" evidence of an agreement. Thus, although there is "direct" evidence that various defendants engaged in conduct consistent with the plaintiffs' theory of the existence of a pricing cartel, there is no significant "direct" evidence of an exchange of commitment as alleged in the plaintiffs' complaints.

That is not to say, however, that the plaintiffs' failure to come forward with significant direct evidence of a conspiracy is fatal to their case. On the contrary, as the discussion that follows demonstrates, the plaintiffs have come forward with ample circumstantial evidence to raise a reasonable inference that the Manufacturer Defendants engaged in collusive, anti-competitive conduct.

A. Plaintiffs' evidence of conspiracy against the Manufacturer Defendants

In support of their allegations that the Manufacturer Defendants entered into an agreement to maintain prices to the retail segment of the industry at artificially high levels, the plaintiffs point to the following: (1) parallel conduct among the Manufacturer Defendants; (2) interdependence between and among the defendants; (3) the existence of industry wide resale price maintenance—i.e. the creation and maintenance of the chargeback system;[10] and (4) frequent, formal communications among competitors—i.e. an opportunity to conspire.

First, the plaintiffs argue that the defendants have engaged in parallel, anticompetitive conduct which was manifested in the form of industry wide price discrimination and a coordinated refusal to discount to retail pharmacies. A central element of the plaintiffs' position is that the defendants engaged in a two-tiered pricing system, pursuant to which the retail segment was forced to pay artificially high prices. That the defendants did engage in a tiered pricing system is virtually undeniable. Indeed, David Landsidle ("Landsidle"), a representative of Defendant Abbott, described the existence of the tiered system and the manufacturers' general approval of it. Regarding his participation in a series of Pharmaceutical Manufacturers Association ("PMA") meetings concerning tiered or differential pricing, Landsidle testified as follows:

> Q: What were the points of views that were expressed?
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> A: People would express the point of view that, historically, the industry has offered different prices to different classes of customers, we could do so. The marketplace operated best if we did so, and that should be done. Some people said, however, politi-

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[10] For a detailed discussion on industry-wide resale price maintenance, a.k.a., the charge-back system, *see infra* at p. 51.

> cally we're getting beat up on this issue. We should do away with this practice and go to a single pricing policy. So, kind of two sides of the issue.
>
> Q: What was the prevailing view?
>
> A: *The prevailing view was that the current practice of having different prices was the appropriate practice.*

Landsidle Dep. at 47-48 (emphasis added).

Defendants respond by arguing that a "glaring" absence of parallel behavior exists in their pricing practices. In contrast to the plaintiffs' assertions, the defendants state that manufacturers' list prices were not parallel and were in fact set competitively. As the defendants note, one of the Class Plaintiffs' experts even acknowledged that he found no conspiracy to fix list prices. *See* Lucas Deposition Transcript at 224 (Oct. 30, 1995). The defendants further argue that their discounts to managed care were not parallel, as their discounting practices varied in time and degree. According to the Manufacturer Defendants, some defendants began discounting in the 1980s; others started in the 1990s; and the size of the manufacturer discounts varied widely by product and consumer. Accordingly, it is the defendants' position that their pricing practices have been competitive.

However, conduct need not be point-for-point consistent to be deemed parallel.[11] The plaintiffs are not alleging that *all* competition among the Manufacturer Defendants ceased. Rather, the anti-competitive conduct in which the defendants allegedly engaged was the uniform decision not to discount to an entire segment of the retail industry, i.e., an agreement not to undercut each other by giving discounts to retail pharmacies and retail buying groups. The plaintiffs' concession that

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[11] Of course, parallel conduct standing alone is not enough to prove a conspiracy. *Reserve Supply Co. v. Owens-Corning Fiberglass Corp.*, 971 F.2d 37, 50-51 (7th Cir. 1992). Rather, proof of a conspiracy requires parallel behavior plus additional facts or circumstances that raise the inference of agreement. *Id.*; *Market Force*, 906 F.2d at 1170.

discounting to managed care began at varying times and occurred in varying degrees does not undermine their theory.

Central to the plaintiffs' claims is the Manufacturer Defendants' allegedly collective agreement not to bid to community pharmacies—chains and buying groups alike—seeking to participate in discounting programs already offered to managed care. According to the plaintiffs, the early 1980s saw the advent of substantial discounting by pharmaceutical manufacturers to managed care entities. As these pricing practices began to proliferate and to affect the marketplace, retail pharmacies, both individually and in the form of buying groups, began to request similar discounts. These requests were met with uniform denials by the manufacturers.

As demonstrated in the plaintiffs' respective briefs, in almost every instance, each Manufacturer Defendant responded that its company policy was not to give discounts to retail pharmacies, retail buying groups, or the retail "class of trade."[12] For instance, on May 15, 1986, after receiving a request for bid pricing from the Pharmacy Buying Association ("PBA"), a retail buying group, Glaxo sent a letter to the PBA stating: "Currently our policy at Glaxo is not to bid to retail pharmacies or retail pharmacy buying groups." Independent Plaintiffs' Ex. 16. On May 16, 1986, William H. Rorer, Inc. (later to become part of Defendant Rhone-Poulenc Rorer) sent a letter to the same buying group stating: "At the present time, William H. Rorer, Inc. does not participate in bids for independent pharmacies." Independent Plaintiffs' Ex. 2-E. Similar letters followed from Defendant Ciba-Geigy on May 21, 1986, Defendant Bristol-Myers on May 22, 1986 and others. *See* Independent Plaintiffs' Ex. 2-C, and 2-D.

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[12] *See* Class Plaintiffs' Response to the Motion of the Wholesaler Defendants for Summary Judgment and to the Legal Principles and General Background Facts Submitted by the Manufacturer Defendants (hereinafter "Class Plaintiffs' Consolidated Response"), at 45 n.29; and Individual Plaintiffs' Memorandum in Opposition to Manufacturer Defendants' Consolidated and Individual Motions for Summary Judgment (hereinafter "Individual Plaintiffs' Consolidated Response"), at 40.

The uniformity of the Manufacturer Defendants' refusal to deal with retail pharmacies as a class is striking. That the defendants' general refusal to even discuss discounting with retail pharmacies was the result of collusion moreover finds circumstantial support in the record. Both the Class Plaintiffs and the Independent Plaintiffs come forward with certain statements and observations made by members of the industry which cast in a suspicious light the defendants' conduct. By way of example, we set forth some of the plaintiffs' evidence.

Julius Sarnat, a former executive with wholesaler General Drug Company, testified as his deposition that there were discussions and a "general agreement" among the Manufacturers on the subject of selling to retail buying groups:

> Q: You recall involving the drug manufacturers in regard to their policy on dealing with buying groups?
>
> A: Well, we posed the question of what their attitude was in terms of making sales to these groups and acknowledging them as a source of supply. And if so, what their agenda would be in relation to the acquisition of their products.
>
> Q: And what information did you receive from them in that regard?
>
> A: Well, we found that mostly—*they were all in general agreement that they would not entertain selling brand name pharmaceuticals to any of these buying groups.*

Sarnat Dep. at 89-90 (emphasis added).[13]

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[13] Manufacturer Defendants argue that Sarnat's testimony is not direct evidence of a conspiracy not to offer discounts to retailers, for Sarnat is not talking about discounting to retail pharmacies but rather, about manufacturers' selling directly to retail pharmacies. The defendants further attack the foundation of Sarnat's observation, pointing out that when asked, Sarnat could not remember exactly with whom he spoke.

A series of documents involving Ciba-Geigy offers perhaps even more compelling evidence that the defendants' frequent denials of retail pharmacists' requests for discounts were the result of concerted actions. On September 4, 1985, a Ciba-Geigy memorandum noted the growth of retail pharmacy buying groups and their increasing requests for bids from drug manufacturers and stated:

> It would be hoped that all drug companies could reject these offers. However, knowing the bidding policy of several companies, I doubt that the PMA will put forth a united front.

Class Plaintiffs' Tab 207, at 2). In response to this memorandum, one of the recipients the next day suggested that steps be taken to assure that drug companies were "united" as to the issue:

> The attached information[14] is self-explanatory, and I pass it on to you for two reasons. First, for your information; secondly and more importantly, to ask if there is anything we are doing or can do about this potentially dangerous situation. *Is the PMA taking steps to assure that companies are united on this issue, and can we put pressure on them toward this end?*

Class Plaintiffs' Tab 207 at 1. The author of this memorandum concludes: "It would be hoped that all drug companies would reject these offers." *Id.* The Manufacturer Defendants attempt to minimize the significance of this exchange, stating that the memoranda were never acted upon and further claiming that upon concluding that these communications were improper, the second memorandum was "tossed in the garbage." Nevertheless, this does not detract from the fact that such communications were made and does not address the

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[14] The "attached information" consisted of two letters sent to pharmacists in Mississippi and Kansas seeking participation in retail buying groups formed to obtain contract pricing from manufacturers.

basis for the author's assumptions that the PMA could and would put on a "united" front.

Finally, the minutes of a November 1990 National Pharmaceutical Council ("NPC") meeting[15] reflect a discussion of "therapeutic substitution" and "referred product list[s]." The notion that manufacturers would even enter into discussions with buyers concerning therapeutic substitution is moreover referred to as a "disturbing trend." Independent Plaintiffs' Landgraf Exhibit 15 at NPC00849.

While these representative statements alone do not prove the existence of an agreement violative of the Sherman Act, taken together, they buttress the plaintiffs' argument that the defendants' seemingly uniform refusal to deal with retail pharmacies was the result of conscious behavior or collusion.

The plaintiffs next claim that it was in the Manufacturer Defendants' interest to engage in the alleged parallel conduct. While the Individual Plaintiffs discuss this issue in terms of "interdependence," the Class discusses it in terms of "motive." Nomenclature aside, establishing that the defendants had something to gain by consciously engaging in apparently anti-competitive parallel conduct is a critical component to the plaintiffs' conspiracy claim. To use the Individual Plaintiffs' choice of words, this entails a showing that the conduct claimed to be parallel would be in each conspirator's interest only if all conspirators acted alike. It would be against each conspirator's interest if a conspirator acted alone. *See Reserve Supply*, 971 F.2d at 50-51 & n.10.

According to the plaintiffs, the motive for the Manufacturer Defendants' refusal to discount to the retail segment is clear: to prevent the spread of the price competition that they were experiencing in the managed care segment of the industry. As

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[15] In attendance at this meeting were representatives from many named defendants, including: Eli Lilly, Abbott, Pfizer, Glaxo, SmithKline, Searle, Marion Merrell Dow, Johnson & Johnson, Zeneca, Warner Lambert, Rhone-Poulenc Rorer, Bristol Myers Squibb, Boehringer Ingelheim and Upjohn. *See* Independent Plaintiffs' Landgraf Ex. 15 at NPC00849.

the Individual Plaintiffs describe the situation, the spread of discounts to community pharmacies would have "significantly eroded the manufacturers' bloated profit margins." *See* Individual Plaintiffs' Ex 1., Matox at CG00951178 ("we [will] raise prices in the retail fee-for service to balance our low profit return from the HMO sector"); Individual Plaintiffs' Ex. 27 at GL00911453 (pricing brochure notes that "the traditional retail class of trade" has been "subsidiz[ing]" discounts to favored buyers).

As plaintiffs' counsel articulated during oral argument, back in the 1970s or 1980s, one manufacturer committed the "original sin" by succumbing to the pressures to discount to managed care. Now, faced with similar pressures by the retail segment, none of the manufacturers want to repeat that "sin" by succumbing to the discount requests of the retail pharmacies. Through a series of meetings, a continuous interchange of information, and an ultimate interchange of commitment, the defendants formed a cartel to prevent their discounting from spreading to the retail segment and to make sure that nobody strayed from this course. An internal memorandum from Defendant Abbott's files buttresses the plaintiffs' theory, summarizing the situation as follows:

> It seems to me that the PMA is kind of an OPEC in this context[16]—the first country that breaks away from the cartel will reap the maximum advantage (hence the long-term instability of any cartel). Specifically, if we are perceived by Medco as an ally, then we might reach sweetheart understandings which would be of competitive advantage to us. Of course we do not want to be perceived by our brethren on the PMA as black sheep.

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[16] The context to which the author of the memorandum refers is the issue of what would happen if discounting were to spread to mail order companies like Medco.

Class Plaintiffs' Tab 312 at 1; Tab 313 at 290-96; 373-376.[17] Such evidence supports the plaintiffs' notions of manufacturer interdependence.

Finally, that the defendants had the opportunity to conspire is unquestionable. The record is replete with evidence of seminars and trade association meetings which virtually every defendant attended at one time or another and a coordinated exchange of pricing and other competitive information shared among the manufacturers. Furthermore, the defendants' mutual awareness of each others' policies is demonstrated by the defendants' prolific use of data services, exchanges, and in their united use and development of the chargeback system discussed below.

The plaintiffs cite to numerous instances where the PMA was used by the Manufacturer Defendants as a "clearinghouse for the exchange of pricing and other competitively sensitive information." According to the plaintiffs, PMA meetings, attended by the manufacturers, provided incomparable opportunities for collaboration on competitive issues. Communications were made on such issues as advance manufacturer notification of price increases, pricing options for manufacturers, and the administration of the chargeback system. Regarding this last subject, a memorandum dated March 29, 1990 discusses American Cyanamid's contacting of several other pharmaceutical manufacturers to determine their practices regarding "upfront" deposit/credits to wholesalers. The memorandum concludes: "George, there are still a couple of companies I could not get on the phone in this quick review, but it does appear that *the industry is holding comparatively firm* and not giving up from deposits . . . ." Fritzky Ex. 5 (emphasis added) at AC001946. The plaintiffs cite this memorandum and others as evidence of industry-wide collusion and anti-competitive conduct.

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[17] The Manufacturer Defendants respond to this document by arguing that the context involved a relationship between an advertising agency and Medco. *See* Pien Dep at 289-96, 370-71.

The plaintiffs cite to additional occasions on which large numbers of manufacturers gathered to discuss common concerns within the industry. These discussions frequently were held under the auspices of other industry organizations or conferences. Beginning in 1991, for example, the International Business Communications/U.S.A. Conferences, Inc. ("IBC"), started conducting seminars on pharmaceutical pricing. Representatives of virtually every major pharmaceutical manufacturer were in attendance to view sessions on such topics as "Price Discounting to Major Purchasers," "Pharmaceutical Pricing Forces, Trends & Strategies," and "Managed Care and the Pharmaceutical Industry: What Constitutes a Win-win Relationship." Each of the seminars purportedly entailed group discussions on issues and concerns related to pharmaceutical pricing. Indeed, the record is replete with evidence of similar meetings attended by virtually every manufacturer. Sensitive information was frequently on the agenda at these meetings, hereby providing a forum for such information to undergo a coordinated, industry wide exchange. At the very least, both groups of plaintiffs have come forward with evidence that the defendants engaged in frequent communications with one another and that they had a general mutual awareness of each other's policies.

In responding to the plaintiffs' evidence, the Manufacturer Defendants effectively fragment and compartmentalize each piece of the plaintiffs' evidence of conspiracy, and ask us to look at each piece of evidence in isolation apart from the other parts of the record. The United States Supreme Court, however, has expressly admonished against such an approach:

> In [conspiracy anti-trust cases] plaintiffs should be given the full benefit of their proof without tightly compartmentalizing the various factual components and wiping the slate clean after scrutiny of each. ". . . The character and effect of a conspiracy are not to be judged by dismembering it and viewing its separate pans, but only by looking at it as a whole. *United States v. Patten*, 226 U.S. 525, 544 (1913) . . .; and in a case like the one

> before us, the duty of the jury was to look at the whole picture and not merely at the individual figures in it."

Continental Ore Co. v. Union Carbide & Carbon Corp., 370 U.S. 690, 698-99 (1962) (quoting *American Tobacco Co. v. United States*, 147 F.2d 93, 106 (6th Cir. 1946)). It is the defendants' argument that parallel conduct alone does not amount to a conspiracy; isolated statements and observations of industry members do not alone prove a conspiracy; meetings and communications between and among the defendants are innocent activity and do not in and of themselves prove a conspiracy; and systematic exchanges of competitive information and trade data do not amount to a conspiracy. While each piece of the plaintiffs' evidence, when looked at in isolation, would not be sufficient to establish a conspiracy, when the evidence is looked at as a whole and in the context of the plaintiffs' theory of its case, we believe that the evidence is sufficient to raise a reasonable inference of the existence of a conspiracy among all of the Manufacturer Defendants.

B. Whether the Manufacturer Defendants have offered evidence tending to show that their conduct is as compatible with legitimate business activities as it is with illegal conspiracy.

We now turn to whether the Manufacturer Defendants have presented a plausible, justifiable reason for their conduct that is consistent with proper business practice. It is at this point where the motivation of the defendants becomes critical. Lack of motive bears on the range of permissible conclusions that might be drawn from ambiguous evidence: "if the [defendants] had no rational economic motive to conspire, and if their conduct is consistent with other, equally plausible explanations, the conduct does now give rise to an inference of conspiracy." *Matsushita*, 475 U.S. at 596-97.[18]

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[18] The Supreme Court cautions, however, that if defendants did have a plausible reason to conspire, ambiguous conduct alone does not suffice to create a triable issue of conspiracy. *Id.* Rather, conduct that is

Indeed, the defendants maintain that their conduct cannot give rise to any such conspiratorial inference, and they set forth several contentions to that effect. The defendants first affirmatively contend that their pricing behavior was not "parallel" and argue that the absence of such parallel conduct alone mandates summary judgment in defendants' favor. *See, e.g., Quality Auto Body, Inc. v. Allstate Ins. Co.*, 660 F.2d 1195, 1200 (7th Cir. 1981) (affirming summary judgment where conduct of insurers alleged to have engaged in conspiracy was not parallel), *cert. denied,* 455 U.S. 1020 (1982). In an effort to refute the presence of parallel conduct, the defendants stress that industry pricing policies vary considerably depending on the manufacturer, the drug, the dosage, and the competitive circumstances involved. The policies of manufacturer discounting to managed care may have been uniform among these defendants, but such policies were implemented at different times and to different degrees. Furthermore, although the plaintiffs allege that the manufacturers uniformly decline to give discounts to retailers, the defendants profess that several manufacturers, in the exercise of their individual business judgments, have offered discounts or rebates on particular products to retailers or retailer buying groups.

The defendants argue that, even if we were to construe as parallel conduct the manufacturers' uniform discounting to managed care and that unvarying refusal to consider the retail pharmacies' ability to similarly influence the market, the plaintiffs still cannot establish that each of the manufacturer's pricing decisions was against its economic self-interest. Evidence of parallel conduct which is a "plausible coincidence or an expectable response to a common business" does not support an inference of conspiracy. *Nichols Motorcycle Supply Inc. v. Dunlop Tire Corp.*, No. 93 C 5578, 1995 WL 532265, *27 (N.D.Ill. Sept. 6, 1995) (quoting 6 P. Areeda, *Antitrust Law*, § 1425 at 146).

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as consistent with permissible competition as with illegal conspiracy does not, without more, support an inference of conspiracy. *Monsanto Co. v. Spray-Rite Service Corp.*, 465 U.S. 752, 763-64 (1984).

The defendants maintain that the various pricing and discounting decisions made by the defendants were based on a variety of legitimate business concerns, including the changing posture of the health care industry and the economic emergence of managed care. The granting of discounts to hospitals and managed care organizations was purportedly justified by the manufacturers' desire to avoid being denied access to participating physicians and patients. The denial of comparable discounts to retail pharmacies was similarly justified given the defendants' belief that the retail pharmacies, which did not utilize restrictive formularies, did not possess the same ability to deny manufacturers access to certain groups. The defendants argue that these circumstances, which were common to all of the manufacturers, add to the "plausible and justifiable alternative interpretation of [each defendant's] conduct that rebuts the alleged conspiracy." *Market Force Inc. v. Wauwatosa Realty Co.*, 906 F.2d 1167, 1174 (7th Cir. 1990). According to the defendants, discounts were not extended to retail customers because, unlike managed care, the retail customers did not have the power to affect market share.

This contention by the defendants, that the retailers lack the ability to affect market share, is vigorously disputed by the plaintiffs and is pivotal to each party's case. If, as a matter of law, the manufacturers' collective assertions are accurate, then the defendants' no-discounting policies truly reflect a legitimate business concern. However, if the plaintiffs are able to prove an ability to influence the market, then the defendants' uniform denials warrant scrutiny beyond that afforded on summary judgment.

The defendants steadfastly maintain that retailers significantly differ from managed care in their ability to affect market share. Through its use of formularies and its ability to control access to patient populations, managed care successfully exerted economic pressure on the manufacturers in order to negotiate discounts on previously undiscounted drugs The ability of managed care to exclude the manufacturer's

products from their respective formularies absent manufacturer capitulation provided a powerful incentive. The defendants claim that, unlike managed care, the retail pharmacies simply do not possess that same market power, or the same power over the prescribing decision. As such, discounts to the retailers have been largely denied.

In support of their argument that the retailers differ significantly from managed care in this respect, the defendants note that, in sharp contrast to their experiences with managed care, no retailer has noticeably reduced its sales following a manufacturer's refusal to offer a discount. *See* Rodowskas Dep. Tr. at 486. The defendants further maintain that retail pharmacies have little influence over the drug prescribed by the doctor and cannot switch to alternative products as prices increase. Except in cases where generic substitution is permitted, it is the prescribing doctor, and not the retail pharmacy, that determines the brand of drug to be prescribed. *See* Defendants' Joint 12(m) at ¶ 62.

The defendants set forth several explanations as to why retailers have not effectively implemented their own formularies or engaged in therapeutic switching in an effort to liken themselves to managed care. Reasons cited include the "questionable" ethics of pharmacies attempting to influence physician prescribing habits, pharmacists' believing that they cannot in fact control the doctors, pharmacists' views that drug selections for the general public should not be limited, and beliefs that such changes would be too time-consuming or otherwise impractical. *See* Defendants' Joint 12(m) at ¶ 66. In any case, the defendants maintain that, by their very nature, retail pharmacies lack the ability to affect market share—at least to the degree necessary to warrant the offering of discounts.

The plaintiffs, of course, vehemently dispute the defendants' assessment, arguing that to the extent that the retail pharmacies have been less successful than the favored buyers in, for example, switching prescriptions, it is due to the higher prices paid as a result of the conspiracy and the correspond-

ing lack of any economic incentive to attempt to switch a higher-priced brand name drug to a lower-priced one. *See* Plaintiffs' 12(m) Response at § 62. This observation notwithstanding, where pharmacist requests to switch prescriptions have been made to physicians, the record indicates that pharmacists have overall been very successful. A nationwide survey cited by the plaintiffs indicates that 76.9% of physicians asked by a pharmacist to switch prescriptions consented to do so. *See* G. Muirhead, "R.Ph.s Playing Major Role in Therapeutic Decisions," *Drug Topics*, June 7, 1993 at 12-13. Experiments on drug switching conducted in the field further support the accuracy of such results and indicate that, at least when an effort is made to affect market share, the retailer may, contrary to the defendants' contentions, possess considerable power.

The ability of even a single independent pharmacy to move market share and the defendants' unfailing refusal to discount regardless was dramatically demonstrated in an "experiment" by Plaintiff Towler Drug Company. In 1990, Mr. Towler began dispensing Schering's Proventil in preference to Glaxo's Ventolin, two co-marketed products. Glaxo's sales representative noticed the change in sales and wanted to know why Towler was prescribing so much Proventil and so little Ventolin. When Towler explained that he was trying to qualify for a Schering discount, the Glaxo representative told Towler that it was Glaxo's policy not to give any discounts to independent pharmacists but asked him to demonstrate that he could move market share to the Glaxo product. Towler Aff.II ¶ 9. Towler thereafter began dispensing only Glaxo's Ventolin, but Glaxo refused to change its no-discount policy. Towler Aff. ¶ 11.

After three months, Schering's representative visited Towler and wanted to know why Towler was dispensing so much Ventolin when he had previously been dispensing Schering's Proventil. Towler Aff.II ¶¶ 11-12. Towler explained what he was doing and, having demonstrated Towler's ability to influence the market, requested a Schering discount. Schering's

representative and her supervisor informed Towler that Schering did not give discounts to independent pharmacists under any circumstances. Towler Aff.II ¶¶ 13-14. At the urging of Glaxo's representative, Towler again began dispensing only Ventolin. Ultimately, however, the Glaxo representative told Towler that Glaxo still would adhere to its policy; Towler could not have a discount because he was an independent pharmacist. Towler Aff.II ¶ 16.

In an effort to stop Towler's switching of its product, Glaxo said that it was going to insist that one of the nearby doctors, Dr. Bennett, write all of her prescriptions for the brand name Ventolin or else Glaxo would stop giving her free samples. Towler Aff.II ¶ 17. Undaunted, Towler for the next two months called that doctor and obtained her permission to change all prescriptions written for Ventolin to Proventil. Then, to prove his point, from January to March 1992, Towler had all prescriptions written for Proventil switched to Ventolin; and finally, from March 1992 to May 1992, Towler had all Ventolin prescriptions switched to Proventil. Towler Aff.I1 ¶¶ 18-21. Despite this graphic proof of Towler's ability to affect the market, neither manufacturer was willing to reward Towler's activity with any incentives.

The plaintiffs cite several other instances which indicate not only that the retail pharmacies had the ability to move market share, but that the defendants were cognizant of this fact. Indeed, the defendants acknowledge that the principal way in which the Independent Physician's Association ("IPA")-type HMO moves market share is to create financial incentives for the community pharmacists that dispense prescriptions. *See* Defendants' Joint Brief at 13. Along these lines, a study conducted by Glaxo concluded:

> Regardless of specialty and number of HMO affiliations, physician awareness of formularies is suggested to be low. Physicians who are aware of formularies rarely comply with them. . . . Physicians who are aware of the formulary and report they consult it seldom adhere to the formulary. . . . *Increasingly, it appears that the role of*

> *community pharmacists is the focus of cost containment. This is evidenced by the finding that what is prescribed by physicians is often not what is being dispensed at the pharmacy. . . . Not only are pharmacists more likely to be aware of the formulary and the need to adhere to the formulary guidelines, but they are also more likely to question when the prescription is out of line with formulary recommendations and have the prescription changed. . . .*

See Caprariello Ex. 22, at GL03276313, '15 & '19 (emphasis added). American Home Products similarly acknowledged such observations, noting that "In some cases an HMO expects the pharmacist to enforce the formulary, contacting the physician when he writes a non-formulary drug and asking that it be switched. *This can be a very effective mechanism.*" *See* Swartz Ex. 10, at 501285107 (emphasis added).

Such examples exemplify the plaintiffs' contentions that the degree of market power which the defendants ascribe to managed care is often inflated. Furthermore, to the extent that the defendants imply that managed care organizations possess market power to a degree which the retail pharmacies do not, and that this factor accounts for differential pricing, the plaintiffs strongly disagree. In sum, the plaintiffs have demonstrated that, provided with the proper incentives, the retail pharmacies can and do have some ability to move market share. At the very least, the plaintiffs' evidence as to this point casts a cloud upon the defendants' arguments to the contrary.

Given this latter circumstance, the defendants have failed to establish that the conduct which forms the basis of the plaintiffs' complaint is as compatible with the legitimate business activities of the plaintiff as it is with an illegal conspiracy. Although the defendants maintain that their pricing policies with regards to the retail pharmacies are lawfully founded, the plaintiffs have sufficiently rebutted the defendants' "legitimate" assertions that retail pharmacies were refused discounts due to their inability to move market share.

The record is replete with instances of collusive behavior, parallel conduct, uniformity of responses, mutual awareness of each other's policies and practices, and various incriminating quotes on the part of the defendants. While any one of these alone would not be sufficient to send the plaintiffs' case to a jury, any combination of the above is sufficient.

C. Whether the plaintiffs have presented evidence that tends to exclude the possibility that the defendants were pursuing their legitimate independent interests.

Even assuming that the evidence of conspiracy could be construed as ambiguous, the factors cited above by the plaintiffs tend to exclude the possibility that the defendants were pursuing independent, legitimate interests. See *Serfecz v. Jewel Food Stores*, 67 F.3d 591, 599 (7th Cir. 1995). In spite of evidence that the retailers could move market share (in some cases, better than the preferred customers), the defendants uniformly persisted in their refusals to extend discounts to this entire segment of the market. Portions of the record belie the defendants' contention that the retailers were refused the benefits of preferred customer status on account of the retailer's inability to influence the market. To the contrary, as discussed above, the record suggests that, having succumbed to the pressures of managed care, the manufacturers together set out to impose artificially high prices on the retail customers in order to retain their high profit margins. To this end, the evidence tends to support the plaintiffs' theory.

Because we find that, based on the totality of the record, an overall "inference of conspiracy is reasonable in light of the competing inferences of independent action," *Matsushita*, 475 U.S. at 588, the plaintiffs' Sherman Act claims may appropriately proceed to trial. Accordingly, the Manufacturer Defendants' motion for summary judgment is denied.

II. Manufacturer Defendants' Individual Summary Judgment Motions

Having determined that the record supports an inference of conspiracy among the Manufacturer Defendants, we now address the defendants' individual motions for summary judgment. As to the plaintiffs' Sherman Act claims, each of the twenty-four Manufacturer Defendants moves for judgment in its favor.[19] In support, each defendant presents evidence in an effort to show that its pricing policy was the product of independent judgment and not due to any conspiracy participation.

As discussed at length above, at the heart of the plaintiffs' Sherman Act claims are allegations to the effect that the defendants collusively created and maintained a dual pricing system which raises or stabilizes the prices paid for brand name prescription drugs by retail pharmacies. In order to accomplish this goal, the plaintiffs maintain that manufacturers refused to make available to community pharmacies various discounts, rebates, and other price-lowering mechanisms that each of the Manufacturer Defendants had made available to managed care buyers.

On February 6, 1996, this court granted Defendant DuPont Merck Pharmaceutical's motion for summary judgment. *See In re Brand Name Prescription Drugs Antitrust Litigation*, 1996 WL 51210 (N.D.Ill. Feb. 6, 1996). Upon its formation in January 1991, DuPont Merck declared and thereafter employed a Single Price Policy, charging the same undiscounted prices for its brand name products to both managed care and retail pharmacies. DuPont Merck's adherence to such a policy, which by its very nature was antithetical to the "tiered" pricing policy at the heart of the alleged conspiracy,

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[19] As indicated above, on February 15, 1996, this court preliminarily approved a settlement agreement between the Class Plaintiffs and many of the Manufacturer Defendants. As between the Class Plaintiffs and the settling defendants, no motions for summary judgment are here considered. However, given that no settlement has been reached with the Individual Plaintiffs, each of the Manufacturer Defendants' motions for summary judgment will be addressed.

effectively distanced DuPont Merck from the plaintiffs' allegations. Although DuPont Merck participated in the charge-back system and was privy to discussions and meetings with the other manufacturers, DuPont Merck simply did not engage in the alleged proscribed conduct, i.e., DuPont Merck neither engaged in discriminatory pricing, nor did it charge Plaintiffs artificially high prices when compared to favored buyers. Summary judgment in DuPont Merck's favor was therefore appropriate.

Unlike DuPont Merck, each of the remaining Manufacturer Defendants has, during the relevant period, engaged in the two-tiered pricing scheme about which the plaintiffs complain. The extent to which each manufacturer has implemented such a policy varies, as do the circumstances surrounding such implementations. Not surprisingly, the defendants seek to capitalize upon these variances in an effort individually to distinguish themselves from other manufacturers and to distance themselves from any alleged conspiracy. Valiant efforts are made by each defendant to liken itself to DuPont Merck. While several present compelling arguments, none, however, is so strong as to warrant entry of summary judgment in its favor.

Although the Manufacturer Defendants suggest that the plaintiffs must build an entirely separate case against each defendant, this is not entirely true. Rather, in deciding a motion for summary judgment, the court in a federal antitrust case "should not view each piece of evidence in a vacuum":

> Seemingly innocent or ambiguous behavior can give rise to a reasonable inference of conspiracy in light of the background against which the behavior takes place. Evidence can take on added meaning when viewed in context with all the circumstances surrounding a dispute. Thus, while we must carefully determine what inferences reasonably may be drawn from each piece of evidence, we must make this determination in light of *all of the evidence* proffered by [the plaintiffs].

Apex Oil Co. v. DiMauro, 822 F.2d 246, 255 (2nd Cir. 1987) (emphasis added), *cert. denied*, 484 U.S. 977 (1987); *see also Continental Ore Co. v. Union Carbide & Carbon Corp.*, 370 U.S. 690-698-99 (1962). Thus, to the extent that the defendants attempt to exonerate themselves by compartmentalizing their actions, these efforts must be construed within the greater context of all of the evidence submitted.

Perhaps the most critical component of the defendants' case is the propriety of the manufacturers' justification for refusals to offer discounts to retail pharmacies in light of existing contracts and discounts uniformly offered to managed care. The defendants have steadfastly maintained that managed care possesses an ability to move market share which the retail pharmacies do not possess. To the extent that a manufacturer reaches this conclusion independently, the asserted legitimacy of such a belief becomes more credible.

To this end, manufacturers such as Boehringer Inhelheim, Burroughs Wellcome, SmithKline Beecham, Upjohn, and Warner-Lambert point to independent pricing studies which suggest that discounts to retailers would not be profitable. Numerous other manufacturers assert that their policies were the result of unsuccessful attempts to offer certain discounts to retailers.[20] Defendants such as Burroughs Wellcome, Eli Lilly, Hoffmann-La Roche, and Pfizer strive to distinguish their pricing policies from the other defendants.[21] Defendants

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[20] Among the Manufacturer Defendants making such an argument are American Home Products, American Cyanamid, Bristol Myers Squibb, Boehringer Inhelheim, Burroughs Wellcome, G.D. Searle, Glaxo, Hoffmann-La Roche, Johnson & Johnson, Knoll Pharmaceuticals, Hoechst Marion Roussel, Rhone-Poulenc Rorer, Sandoz, Schering Plough, SmithKline Beecham, Upjohn, Warner-Lambert, and Zeneca.

[21] To this end, Burroughs Wellcome states that 50% of its products are single source products, and as to these products, no discounts are given to anyone. Eli Lilly maintains that it adhered to a single price policy until 1992. Pfizer asserts that it did not offer discounts to anyone on single source drugs until 1992. Hoffman-La Roche notes that its primary market is hospitals and institutional care, not the retailer pharmacies. Other manufacturers make less convincing attempts to distinguish their policies, but virtually everyone, including those cited, has to some extent

Abbott, Eli Lilly, Forest, and Zeneca claim that they were either not present or were not involved during critical meetings at which allegedly "conspiratorial conduct" occurred.

While such claims lend support to the notion that these manufacturers' decisions were independently founded, they do not detract from the substantial evidence submitted by the plaintiffs to the contrary. Indeed, with regards to the market share issue, the plaintiffs point to numerous instances in the record where manufacturers (including those named above) have admitted that retail pharmacies can and do influence the market. Several examples illustrate the point:

* In enumerating the market forces that Defendant Abbott was "against" because they could negatively affect Abbott's market share and margins, Abbott listed the power of retail pharmacists first. Lehn Ex. No. 3, AB 70001155-56.

* When Defendant Knoll's competitor, Searle, granted retail pharmacists a 5%, one-time stocking allowance on a competitive product, Knoll was forced to respond immediately and "revise" its stocking allowance to "match" that of Searle. Turturro Ex. N. 13, RP 912627-28.

* According to Defendant SmithKline Beecham, "[r]etail pharmacies represent a large and important market where we have an excellent opportunity to significantly increase sales. Retail pharmacists can influence the product dispensed, ... and they can provide [the manufacturer] with valuable information on physician prescribing habits." Fish Ex. No. 23, SK 200300496-99, SK 200301475-78.

* A January 1992 memorandum by Defendant Searle recognized that "Chains can have a significant influence over dispensing Searle products. . . ." Heady Ex No. 50, SE 49423-29.

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engaged in two-tiered pricing, the chargeback system, and a refusal to extend discounts to retail pharmacies.

* After visiting with the Big B pharmacy chain, Defendant Merck was "convinced that they have the determination, the financing, the ability to shift market share and the number of members which will justify offering the PBM initiative to this organization. . ." Senich Ex. No. 118, MR 7232-36.

* Defendant Pfizer provided a one-time rebate to retailers for stocking the Pfizer product, MS Contin. Pfizer noted that "dollar claims [for the rebates] could be significant" and that the one-time promotion accounted for "a jump in monthly sales of MS Contin to this class of trade in September 1991. . . ." Sackler Ex. No. 5, PF 000618-21.

* Defendant Eli Lilly has noted that "as we move into the nineties, It seems apparent that the decisions on prescription drugs are going to be very significantly influenced by non-physicians." The pharmacist was first on Lilly's list of such "influencers." Gall Ex. No. 14, LY 2181029-39.

The record is replete with similar response within the pharmaceutical industry which warrant the conclusion that retail pharmacies had the ability to influence the market and that the manufacturers were conspicuously aware of that fact. To varying degrees, virtually every manufacturer acknowledged the power of the retailer, yet the retailer was given treatment persistently less favorable than that afforded to managed care.

While the presence of particulars such as independent studies and failed rebate programs might be sufficient for absolution absent other evidence of participation in a conspiracy, such evidence, when combined with the presence of the two-tiered pricing policies and the numerous exchanges which transpired regarding sensitive industry issues, fails to rebut the inference of manufacturer participation in a conspiracy. Similarly, the failure to amend all blameworthy industry functions, taken alone, might be sufficient for manufacturer exoneration. However, when viewed in light of all of the other

evidence indicated throughout this opinion, entry of summary judgment cannot be appropriate.

Although each manufacturer aspires to distinguish itself from the next, several commonalties emerge from the record. The record indicates, for example, participation by virtually every manufacturer in industry meetings and seminars to discuss strategies that should be followed in setting prices for brand name prescription drugs. Similarly, virtually every manufacturer participated in surveys and inquiries conducted by other defendants regarding pricing policies. Additional common threads emerge. Every manufacturer, for example, was directly involved with the implementation of a charge-back system through which manufacturer discounts were extended to favored purchasers. Every manufacturer further participated in discussions and agreements pertaining to their refusals to bid to retail buying groups and the maintenance of differential pricing. Finally, with recent and limited exceptions, every manufacturer has refused to offer discounted pricing to retail pharmacies and retail buying groups. As to this last observation, evidence of the defendants' uniformity of conduct can be summarized by a May 25, 1990 letter from the President of Schering Laboratories, declining to offer discount pricing to a community pharmacy. The letter explained, "we limit our bidding to institutions with closed populations, such as staff model HMO's; hospitals, non-profit clinics serving indigent patients; non-profit charitable organizations, and Federal, State, County and City institutions. *This practice is employed by virtually all of our competitors.*" Kogan Ex. 20 (emphasis added).

When cast amidst all of the existing evidence, the individual differences in policy and practice among the manufacturers diminish markedly in significance. Individual differences notwithstanding, unlike DuPont Merck, each of the remaining defendants utilize (albeit to varying degrees) a two-tiered pricing policy which maintains prices to the retail segment of the market, and, with limited exceptions, each manufacturer has refrained from discounting to that segment.

Each manufacturer, moreover, has had ample opportunity to conspire and has engaged in conduct and adopted policies consistent with conspiratorial participation. Thus, while several of the defendants present compelling arguments to the contrary, the record nonetheless supports an inference that each of the Manufacturer Defendants engaged in conduct from which the existence of a conspiracy and membership therein may be fashioned.

As we have previously recognized, "summary procedures [are to] be used sparingly in complex antitrust litigation where motive and intent play leading roles, the proof is largely in the hands of the alleged conspirators, and hostile witnesses thicken the plot." *Poller v. Columbia Broadcasting*, 368 U.S. 464, 473 (1962). Acknowledging the wisdom of this principle, we conclude that the culpability of each Manufacturer Defendant is more appropriately left to the jury. Because the record finds substantial support for each manufacturer's participation in the alleged conspiracy, the twenty-four individual motions for summary judgment are denied.

III. Wholesaler Defendants' Motions for Summary Judgment

The essence of the Sherman Act claims brought by the plaintiffs is a "conspiracy to keep the prices paid by retail pharmacies artificially high by denying discounts to retail pharmacies on brand name pharmaceutical products." Managed care health care organizations are able to buy brand name prescription drugs at discounted prices. The Wholesaler Defendants are charged with membership in the conspiracy and, accordingly, are alleged to be in full agreement with the manufacturers in unlawfully discriminating against the retail pharmacies.

Under well-settled principles of conspiracy law, in order to establish that the wholesalers are as fully answerable at law for their conduct as the manufacturers, the evidence must show that they "had a conscious commitment to a common scheme designed to achieve that unlawful objective." *Monsanto Co. v. Spray-Rite Serv. Corp.*, 465 U.S. 752, 764 (1984).

To sustain the charge of conspiracy to keep prices artificially high by denying discounts to the plaintiffs, the plaintiffs must prove the existence of the conspiracy and a participatory link with the Wholesaler Defendants. A defendant's mere knowledge of, approval of, association with, or presence of a conspiracy is insufficient to establish the participation element. *United States v. Durrive*, 902 F.2d 1221, 1224 (7th Cir. 1990). Although *Durrive* is a criminal case, the holding that an individual defendant's participation in an established conspiracy must be supported by substantial evidence in order to be sustained applies to civil cases as well.

There is no evidence, direct or circumstantial, in the entirety of this massive record that the wholesalers had *any* involvement in the decisions not to afford discounts to the plaintiffs. And this void in the evidence exists, irrespective of whether the decision not to give discounts was made collectively by the manufacturing defendants pursuant to the charged conspiracy, or whether these were a series of independent, albeit similar, policies made for innocent business reasons unique to each manufacturer. The wholesalers were not consulted about the no-discount policies prior to or during their implementation, and no evidence exists that the wholesalers' position was considered by or carried any weight with the manufacturers. On the precise question of the no-discount conspiracy charge and the conscious commitment to achieve the unlawful objective, the evidence is conspicuously absent as to the wholesalers. In truth, the wholesalers had nothing to do with the no-discount policies.

Indeed, the more compelling evidence is that the wholesalers decried the very no-discount pricing policies which the plaintiffs allege is the essence of the charged conspiracy. The retail pharmacies constituted the most important customers of the wholesalers in terms of sales. As the former's unhappiness with differential pricing increased, so did the wholesalers. As early as 1985, the National Wholesale Druggists Association ("NWDA") issued a position statement criticizing differential pricing if such pricing did not take into account

actual marketplace functions. The wholesalers advised the manufacturers that "as a result of the differential pricing system retail pharmacies could not compete on a level playing field." Wholesaler Defendants Rule 12 (N) Stmt. ¶18 at 40.

As reflected in the wholesaler defendants' reply memorandum at pages 33-35, the following items are disclosed by the record in the references noted:

1. in 1986, Bud Albers, a wholesaler and ex-Chairman of the NWDA, began publishing position papers that were sent to manufacturers, among others, complaining about preferential pricing and advocating legislative reform to protect independently owned and operated enterprises;

2. in a March 1986 meeting of the NWDA Board, the NWDA adopted a position statement that criticized preferential pricing as the root cause for illegal diversion;

3. the NWDA, at various times, told the manufacturers that differential pricing put pressure on independent pharmacies and threatened their survival;

4. at a 1989 NWDA regional meeting, wholesalers told manufacturers that a one price policy to all levels of trade would eliminate most pricing problems and recommended that the free enterprise system determine profit margins.

The record contains many other references similar in nature about the wholesalers' consistent opposition to the two-tiered pricing policy. This conduct is antithetical to membership in the charged conspiracy. Even assuming an agreement by manufacturers, this evidence reflects *non-agreement* by the wholesalers. Expressed opposition to the manufacturers' two-tiered pricing policies serves to defeat membership by the wholesalers in the conspiracy charged.

The substance of the wholesalers' position, as reflected through NWDA, is perhaps best captured during President Clinton's hearings and proposals involving the health care industry in general. In connection with the proposed Health Security Act, the NWDA reaffirmed its opposition to two-tiered pricing and explained that it had a long-standing policy that the pricing and promotion of products should be based on a true functional difference among customers and not on an artificial class of trade. Colbath Reply Aff. Exh. O at MCK AB 01609. The reason offered for this position was to enhance the community pharmacy's ability to compete. These pharmacies were the wholesalers' major customer segment. *Id.* at MCK AB 01610.

The plaintiffs ignore the fact that the wholesalers had nothing whatsoever to do with the adoption of the "no discount to retail pharmacies" policies practiced by the manufacturers, ignore wholesaler opposition to those policies, and concentrate instead on the wholesalers' participation in the chargeback system. As described previously, purchasers of brand-name prescription drugs by managed care operators and others were able to obtain discounts from the manufacturers on certain drug purchases. In so doing, these favored groups negotiated the discounts *directly* with the manufacturers. Wholesalers are not involved in the manufacturer's decision whether to extend discounts to any particular customer, the products to be discounted, or the prices the manufacturer extends to such customers. Although some customers purchase directly from the manufacturer, the use of wholesalers in the distribution chain is the common method employed in the movement of these drugs.

When the wholesaler is used, the terms under which the wholesaler provides inventory and delivery service, variously referred to as the wholesaler's service charge, upcharge, delivery charge or some similar term, are determined by the customer and wholesaler without participation by any manufacturer. The wholesaler generally sells to the customers all of its products in exactly the same way, including those sub-

ject to the manufacturers' discount. The price terms are the wholesaler acquisition cost plus the service charge negotiated between the customer and wholesaler.

Although some negotiated discounts are not handled through chargebacks, most are. Some involve a rebate directly from the manufacturer to the customer with no involvement by the wholesaler. Chargebacks are generally preferred by customers because they allow for the payment of the discount price immediately rather than wait for a rebate to be paid. Under the chargeback system the wholesaler charges back to the manufacturer the difference between the price the manufacturer and customer negotiated and the price paid by the wholesaler. The effect of the chargeback system is that the wholesaler finances the amount of the discount for a certain period of time. The benefit to the customer is that only the net amount of the cost of the goods is paid (price of goods to wholesaler plus service charge minus discount). The benefit to the manufacturer is the assumption by the wholesaler of the burden in administering the discount and the temporary cost of financing it.

The reasons the wholesalers participate in the chargeback system are both documented and obvious. *See* Wholesaler Defendants Rule 12(M) Stmt. ¶ 20 at 14. They include:

1. failure on the part of the wholesaler to participate in chargebacks presents the substantial risk of losing a significant amount of business, including all business represented by sales to contract buyers that are not handled through chargebacks;

2. participation in the chargeback system offers a wholesaler the opportunity to increase its business;

3. failure to participate in chargebacks may result in the manufacturer dealing directly with the contract customer for all purposes (and not merely the negotiation of the discount); and

4. loss of business to a competing wholesaler not adverse to the chargeback system.

This Court has repeatedly held that the chargeback system, standing alone, is not illegal. Even the class plaintiffs concede that holding. What the plaintiffs do contend, however, is that the chargeback agreements were a "component of defendants' unlawful price-fixing scheme."

We need look no further than the affidavits and testimony of class plaintiffs experts to see what "component" of the price-fixing conspiracy the chargeback allegedly represented. Dean Wesly A. Magat, in discussing the collusive agreement to deny discounts to the retailers, testified that this collusive agreement revolved around the chargeback system, of which the wholesalers are an integral part. Magat Dep. 420. He testified that the chargeback system enables the manufacturers to sell their products at different prices to different buyers and avoid arbitrage, which would undercut the profitability of that practice. *Id.* at 420, lines 11-15. The "avoidance of arbitrage" is the "key element" of the chargeback system and permitted the implementation of differential pricing.

Professor Jeffrey M. Perloff shared Dean Magat's view. Professor Perloff opined that the maintenance of the alleged conspiracy required the prevention of arbitrage or diversion. Perloff Aff. ¶ 7. According to Professor Perloff, participation of the wholesalers was necessary because the manufacturers could not otherwise prevent or curtail arbitrage (selling of pharmaceuticals by the favored buyers back to wholesalers who would then sell the arbitraged goods to retailers at discounted prices). Perloff Aff. ¶s 7, 8, 10, 11; Magat Dep. 442 & 443. According to Professor Perloff, preventing diversion was critical to the alleged conspiracy of denying discounts to retail pharmacies; it was so integral to the conspiracy that there could be no conspiracy without it.

These contentions by both Dean Magat and Professor Perloff manifest ignorance of one of the most fundamental characteristics of the brand name prescription drug industry

in the United States. Accordingly, their opinions are rendered virtually worthless. Indeed, the class plaintiffs recent retention of Professor Perloff and the request of him to prepare a report on the wholesalers' participation in the cartel after another expert refused to write such a report lends credence to the notion that his opinion was contrived. The idea of a carefully developed position based on full and relevant information, reached after appropriate analysis and tested by acceptable criteria, the hallmark for the admissibility of expert testimony, is lacking here.

The opinions by Professor Perloff and Dean Magat that wholesalers refrained from engaging in diversion or arbitrage because they were members of the conspiracy spawned by the manufacturers are absurd. The Prescription Drug Marketing Act of 1987 (PDMA) prohibits, subject to exceptions not relevant here, resales of prescription drugs by health care entities, hospitals and charitable organizations. It was not some secret agreement with the manufacturers which precluded the wholesalers from acts of diversion and arbitrage, rather it was their compliance with federal law. Conforming one's conduct to the requirements of the law has never been, heretofore, confused with secret and illegal agreements evidencing antitrust violations.

The plaintiffs and their experts also ignore another fundamental precept of health care law. In *Abbott Laboratories v Portland Retail Druggists Ass'n, Inc.*, 425 U.S 1 (1976), the Supreme Court held that discounted pricing of pharmaceutical products sold to non-profit hospitals could violate the Robinson-Patman Act unless the products were for the hospital's "own use." One way for the manufacturer to assure the "own use" safeguard was to receive a certification of "own use" from the hospital. The plaintiffs' conspiracy theory would not only require the defendants to violate the PDMA but also to violate contractual provisions, certifying "own use" by hospitals, with accompanying complicity by wholesalers in the resale of the pharmaceuticals purchased at a discount. Not surprisingly, no evidence is cited to support those opinions. Frankly, none exists.

Notwithstanding their stated acceptance of the principle that it takes more than mere participation by the wholesalers in the chargeback system in order to support status as co-conspirators, the plaintiffs merely give lip service to that holding. Based on their legal submissions, it is clear that chargebacks remain the centerpiece of the plaintiffs' case against the wholesalers. Professor Perloff is relied on heavily for the claimed correlation between the chargeback system and membership in the charged conspiracy by the wholesalers. He opines that because most sales to both retail pharmacies and favored groups were through wholesalers and because the wholesalers were at the center of the chargeback system, the wholesalers had to have been aware of the differential treatment accorded retail pharmacies and the favored group of purchasers. The wholesalers had to have known that the manufacturers generally offered discounts only to certain favored groups of buyers and did not offer such discounts to retail pharmacies." Perloff Aff. ¶ 4.

These promulgations do not aid the plaintiffs. As pointed out earlier, it is not illegal for the wholesalers to participate in the chargeback system. Additionally, it is improper to equate knowledge of another's practice with knowing participation in an illegal conspiracy. Professor Perloff's opinions ignore substantial evidence with respect to the chargeback system and the wholesalers' involvement therein.

The wholesalers' knowledge of the manufacturers' two-tiered pricing system and their participation in the chargeback system does not equate to knowledge that the pricing system was the product of an illegal conspiracy. Material relied upon by plaintiffs' own experts confirms that differential pricing of pharmaceutical products can result from competitive pressures. In opposition to the wholesaler defendants' previous summary judgment motion (*see* Colbath Aff. Exh. C), class plaintiffs' submitted an affidavit from Prof. Morton Kamien which attached materials he relied upon in formulating his opinion. Prof. Lucas testified that he read and relied upon the Minnesota Prescription Drug Study. Lucas Aff. 11 ¶ II. 1, List of Materials Reviewed, p. 11.

By relying upon Prof. Lucas' work, Prof. Perloff also embraces Prof. Kamien's earlier affidavit and the Minnesota Prescription Drug Study. The report is dated April 1994 and was prepared by a division of the Minnesota Department of Health. These materials included a report entitled: "Prescription Drug Study: A Report to the Minnesota Legislature on the Prescription Drug Market" (hereinafter the "Minnesota Prescription Drug Study). After reviewing the use of formularies by institutional pharmacies, the Minnesota Drug Prescription Study concludes:

> All types of pharmacies can move volume, but retail groups have little or no power to offer market share to manufacturers because they must stock drugs for several different third-party payers, all with different formularies. Hospital buying groups and managed care formularies can provide market share to manufacturers and shift all nonformulary drugs to those in the formulary. Formularies are what distinguishes third-party payer and hospital pharmacy bargaining positions from retail pharmacy buying group.

In addition to their prevention of diversion and arbitrage arguments, the plaintiffs offer another reason why the wholesalers joined the manufacturer conspiracy. Plaintiffs claim that the manufacturers rewarded wholesalers for their participation in the charged conspiracy by facilitating speculative buying programs by wholesalers. Speculative buying is the practice of buying programs based on, and in advance of, anticipated price increases.

There are a number of weaknesses in this theory. First, there is no evidence correlating the buying programs to the charged conspiracy. Second, the evidence establishes that these buying programs are common and found in many industries. Third, the plaintiffs engage in the very practice they condemn, and are frequently the beneficiaries of the wholesalers' acumen when price increases later ensue. Finally, there is clear and uncontradicted evidence that the manufacturers

frequently took steps to discourage these practices altogether. The plaintiffs' attempt to label these buying practices as a reward to wholesalers for their contributions to an illegal conspiracy is entirely fanciful.

The plaintiffs raise certain other matters such as the sale of information as evidence of wholesaler complicity in the manufacturers' conspiracy. None of these items merits discussion. They are all without the probative value needed to sustain the premise. These other matters are normal business practices, engaged in by many, and as consistent with innocence as with guilt, usually more so.

Class plaintiffs also contend that the expert opinions offer an independent basis for denying the wholesalers' motion for summary judgment. Even assuring admissibility in evidence of all of the opinions of their experts (many of which are not), the plaintiffs are wrong.

As previously discussed, Professor Perloff testified that the inclusion of the wholesalers in the putative carrel was necessary to prevent arbitrage—the resale of discounted product to retail pharmacies. Perloff Aff. ¶¶ 5, 7 8, 10, 11 (Colbath Reply Aff. Exh. B). So critical was the prevention of arbitrage (and thus, inclusion of the wholesalers), that Prof. Perloff believed that the cartel could not exist in its absence. Perloff Aff. ¶ 5; Perloff Dep. 79:17-81:14, 158:11-24.

Professor Perloff apparently had never read the PDMA, which, as plaintiffs concede, criminalized resale of prescription drugs by "health care entities." Additionally, in some cases contractual restrictions imposed by manufacturers with no wholesaler involvement restricted resale to the manufacturers' other contract buyers. In sum, the lack of arbitrage found so suspect by Prof Perloff (indeed a "key" element to his opinion that the wholesalers conspired, Perloff Dep. 101:22-102:4) cannot be explained by the presence of wholesalers in the distribution system. *See* Perloff Dep. 158:13-24, and discussion of Sec. II. F. *supra*. Dean Magat's testimony is equally deficient.

Dr. Lucas, the Nobel Laureate economist, confirmed the complete breakdown of plaintiffs' theory of wholesaler conspiracy:

> Q. Under your theory of conspiracy . . . if [a wholesaler] stopped conspiring as you've hypothesized the conspiracy, what would it do differently than it's doing now?
>
> A. I'm not sure.
>
> Q. Would it do anything differently?
>
> A. I don't know.

Lucas Dep. (10/31) 41:14-23 Dr. Lucas' testimony reflects the failure of plaintiffs' proof. When asked if he could distinguish between conspiring and non-conspiring wholesalers, Dr. Lucas answered: "No." *Id.* at 43:12-21. Dr. Lucas adds nothing to the case against the wholesalers.

The plaintiffs state that the wholesalers joined the conspiracy and did so out of greed. Survival may be the more accurate description for their involvement in the chargeback system. While the plaintiffs use words and phrases such as "windfall," "huge profits," and "dramatic" to describe wholesaler profit levels, the evidence is at odds with such adjectives. According to the 1994 Minnesota Prescription Drug Study, the net operating margins of drug wholesalers have remained at almost identical low levels since at least 1975, while their operating expenses have decreased five-fold:

Year	1975	1980	1985	1990	1992
Operating Expenses	11.0%	8.5	6.2	4.4	2.3
Profit Margin	2.0%	2.6	2.4	2.4	2.3

Thus, the Minnesota Study also makes it clear that wholesalers have passed along to their customers the fruits of their efforts to wring increased efficiencies out of the drug distribution industry.

An analysis conducted under the auspices of the NWDA confines wholesalers' profit levels. This study indicates that

wholesalers' average net profit (after tax) in 1988 was 1.13%, with an operating margin of 2.35%; this is in sharp contrast to the alleged average manufacturers' 1988 operating margin of more than 22%. Moreover, wholesalers' average return on assets (after tax) in 1988 was 4.67%; the analysis, stating the obvious, notes that "[t]his is not an acceptable return on investment." In contrast, retail pharmacies' return on assets in 1988 was 6.6%, and manufacturers' average return exceeded 28%. See *Wholesale Drugs Magazine*; NWDA Breakthrough: A Future by Design at 10-12 (Colbath Reply Aff. Exh. T).

Plaintiffs' insinuation that the wholesalers, "enjoyment" of these profit levels was the inducement or pay-off for collusive behavior, or that these profit levels rise to "windfall" proportions, is belied by objective and uncontroverted evidence. Wholesaler margins are flatly inconsistent with a conclusion of antitrust conspiracy.

What the evidence more truly reflects is the wholesalers' desire to continue its historical role in the distribution chain. There were expressed fears of a mere warehousing function for their members. Recognition of the economic power of the manufacturers is apparent throughout this record, as is the wholesalers' grudging accession to some of the manufacturers' practices. The chargeback system was but one example. Participation in that system costs the wholesalers money. But when a manufacturer deals directly with a wholesaler's customer with respect to the price the customer will pay to that wholesaler, fears of a further reduced role in the distribution chain are apparent. The retail pharmacies were the wholesalers best customers and, when they were unhappy, the wholesalers shared their unhappiness.

The record clearly establishes the wholesalers' dislike and disapproval of the two tiered pricing system, the very essence of the plaintiffs' conspiracy charge. Participation in the chargeback system is far more an example of the pressures facing the wholesalers than evidence that they jumped on the manufacturers' illegal price-fixing bandwagon. The inde-

pendence wholesalers enjoyed in establishing prices and terms in the sale of *their* goods to their customers has been eroded because of the contracts entered into by the manufacturers and those very customers. The role the pharmaceutical manufactures occupied in the healthcare industry, along with their economic power and the importance of their marketing decisions, more compellingly explains the charge-back system rather than theories of wholesaler complicity.

This view has actually been foretold in this case. Plaintiffs' counsel were apparently willing to dismiss claims against the wholesalers for no money whatsoever, *See* Affidavit of J. Thomas Rosch ¶¶ 3, 4 (submitted as Exhibit B to Memorandum in Opposition to Class Plaintiffs' Motion to Declare Defendants' Judgment Sharing Agreement Unlawful) (Colbath Reply Aff. Exh. U). The principal desire appears to have been in obtaining an assignment from the wholesalers of such antitrust claims as the wholesalers may have had against the manufacturers. It is doubtful that a plaintiff who has a viable cause of action against an anti-trust violator would give up that cause of action for no money. A plaintiff who accuses another of being a conspirator would generally not seek an assignment of their claims against a co-conspirator. A plaintiff would also not include the wholesalers as members of the plaintiff class, as several of the attorneys representing class plaintiffs apparently once did in this case. Among the numerous complaints presently before the Court, it is telling that the wholesalers are defendants only in the class case.

The status of the wholesalers as proper defendants has been previously raised in this case. The defendants claimed that the wholesalers were added in a transparent attempt to avoid the holding in *Illinois Brick*. We denied motions to discuss or for judgment at that time for, among other reasons, the fact that the motions were premature and the plaintiffs were entitled to the opportunity to develop evidence during discovery in support of their well-pleaded complaint. Although afforded the chance to do so, the plaintiffs have failed to produce evidence which would permit a reasonable jury to conclude that the

wholesalers were members of the conspiracy charged, even assuming that such a conspiracy existed. Indeed, a review of the evidence not only supports the view that the Wholesaler Defendants were never members of any conspiracy, it is compelled by it. No reasonable jury could conclude otherwise. For these reasons, the motions of the wholesalers for summary judgment are granted.

IV. Manufacturer Defendants' Motions for Summary Judgment on the Indirect Purchaser Claims

On October 24, 1994, this court issued a memorandum opinion denying the Manufacturer Defendants' motion for a judgment on the pleadings or, in the alternative, for summary judgment. The focus of that opinion was the effect on the present case of the United States Supreme Court's decision in *Illinois Brick v. Illinois*, 431 U.S. 720 (1977). Faced with allegations of a giant vertical price-fixing conspiracy whereby the Manufacturer Defendants and the Wholesaler Defendants "acted jointly and in concert to fix, raise, maintain and stabilize the prices which they charged retail pharmacies for Prescription Brand Name Drugs," *see* Consolidated and Amended Class Action Complaint at ¶ 80(a), we concluded that *Illinois Brick* did not apply. Massive discovery has been conducted since the issuance of the 1994 opinion, and the posture of the case has changed considerably. Accordingly, we feel compelled to revisit the issue of *Illinois Brick*.

In *Illinois Brick*, the plaintiff, the State of Illinois, brought suit against the manufacturers and distributors of concrete blocks, alleging a conspiracy to fix prices in violation of the antitrust laws. The concrete blocks were sold by the manufacturers to masonry contractors who used them in masonry structures. General contractors then used these structures in buildings which were ultimately sold to the state. *Illinois Brick*, 431 U.S. at 726-27. The plaintiff claimed that the intermediaries in the chain of distribution, the masonry contractors and general contractors, "passed on"[22] the increased fixed

[22] "Pass-on" is a process by which an entity in a chain of distribution adjusts its price upward to compensate for an overcharge by a

prices to the plaintiffs. The Supreme Court denied the plaintiffs recovery, holding that as an indirect purchaser in the chain of distribution, the plaintiff was precluded from seeking damages for illegal overcharges passed on to the plaintiff by intermediates in the distribution chain who purchased directly from the manufacturers. *Id.* at 746.

In so holding, the Supreme Court relied upon an earlier decision in *Hanover Shoe v. United Shoe Mach. Corp.*, 392 U.S. 481 (1968). In *Hanover Shoe*, the Court held that an antitrust violator could not defend a suit by a direct purchaser on the basis that the purchaser had not been injured because it had "passed on" an illegal overcharge to its own customers. *Hanover Shoe*, 392 U.S. at 494. Viewing the situation in *Illinois Brick* as an offensive use of this pass-on theory, the Court in *Illinois Brick* concluded that symmetry required a bar of the offensive use of the pass-on rationale by indirect purchasers in the distribution chain. *Illinois Brick*, 431 U.S. at 736. As such, the plaintiffs could not recover against the block manufacturers.

The Manufacturer Defendants analogize their situation to that of the block manufacturer defendants in *Illinois Brick* and assert that, as in *Illinois Brick*, the plaintiffs, as indirect purchasers, are precluded from bringing suit against them. In 1994, we rejected the defendants' assertion, concluding that *Illinois Brick* did not apply to the vertical conspiracy which the plaintiffs alleged in their complaints. A flood of discovery submissions followed, and after an exhaustive evaluation of the evidence, it has become apparent that the massive ver-

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prior party in the chain. Comment, The Indirect Purchaser's Right to Sue Under Section 4 of the Clayton Act: Another Congressional Response to Illinois Brick, 32 Am.U.L.Rev. 1087, 1087 n.2 (1983). Normally, this occurs when sellers pass on costs downward in the chain of distribution from the manufacturer to the ultimate purchaser. *Id.* However, the reverse can also occur. *Id.* Passing on costs spreads the effect of anticompetitive activity beyond the direct purchaser or seller to all buyers and sellers in the chain of distribution. *Id.* The result is that the ultimate buyer or seller often bears the cost of the overcharge. *See* Note, Scaling the Illinois Brick Wall: The Future of Indirect Purchasers in Antitrust Litigation, 63 Cornell L.Rev. 309, 311 (1978).

tical conspiracy alleged to have existed and prospered among the Manufacturer Defendants and the Wholesaler Defendants, even if we assume a conspiracy, was not vertical at all. Rather, any alleged illegalities occurred at the Manufacturer level; culpability at the Wholesaler level was lacking. As alleged by the plaintiffs, *Illinois Brick* poses no bar to the plaintiffs' case against the Manufacturer Defendants. As established, however, the effect of the so-called indirect purchaser rule set forth in *Illinois Brick* requires some reexamination.

When the Supreme Court decided *Illinois Brick* in 1977, the opinion was not without its critics. In a potent dissent, Justice Brennan labeled the Court's decision a "regrettable retreat" from the broad and comprehensive scope which the antitrust laws had, until that time, sought to effectuate. *See Illinois Brick*, 431 U.S. at 749 (Brennan, J., dissenting). As expressed in the dissent:

> The Court today regrettably weakens the effectiveness of the private treble-damages action as a deterrent to antitrust violations by, in most cases, precluding consumers from recovering for antitrust injuries. For in many instances, consumers, although indirect purchasers, bear the brunt of antitrust violations. To deny them an opportunity for recovery is particularly indefensible when direct purchasers, acting as middlemen, and ordinarily reluctant to sue their suppliers pass on the bulk of their increased costs to consumers farther along the chain of distribution. Congress has given us a clear signal that § 4 is not to be read to have the restrictive scope ascribed to it by the Court today. I would follow the congressional understanding and therefore would affirm.

Id. at 764-65 (Brennan, J., dissenting). Notwithstanding these early criticisms, nearly twenty years after the issuance of *Illinois Brick*, the Court adheres to its doctrine and has permitted few exceptions to the indirect purchaser rule.

That is not to say, however, that exceptions to the indirect purchaser rule do not exist. In *Illinois Brick*, the Court explic-

itly recognized at least two such exceptions. Under a pre-existing cost-plus contract, the first exception to the "pass-on" situation, the purchaser pays a specified markup above the seller's own cost for a fixed quantity of the product. *See Id.* at 736. The commitment of the customer to buy a fixed quantity of the product regardless of the price insulates the seller from any injury in the form of a decrease in sales that might result if prices increased. The effect of the overcharge is therefore determined in advance, "without reference to the interaction of supply and demand that complicates the determination in the general case." *Id.* In such a case, the indirect purchaser rule does not apply.

The second exception recognized by the Court in *Illinois Brick*, the so-called "control" exception, involves the scenario where a direct purchaser is owned or controlled by its customer. *Id.* at 736 n.16. The most common control situation, however, is where the indirect purchaser alleges that the antitrust defendant effectively controls the direct purchaser. Although the control exception has most successfully been utilized where the direct purchaser is a subsidiary or is otherwise owned by the alleged violator, *see, e.g., In re Sugar Indus. Antitrust Litig.*, 579 F.2d 13 (3d Cir. 1978), the essence of the *Illinois Brick* exception is that the degree of control exercised by the defendant effectively transforms the transaction—from defendant to middleman to indirect purchaser—into one sale. *See Jewish Hosp. Ass'n. of Louisville, Kentucky, Inc. v. Stewart Mechanical Enterprises, Inc.*, 628 F.2d 971, 975 (6th Cir. 1980) (limiting "control" exception to relationships "involving such functional economic or other unity between the direct purchaser and either the defendant or the indirect purchaser that there effectively has been only one sale"). In such a circumstance, market forces are superseded and the rationales of *Illinois Brick* do not apply.[23]

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[23] Indirect purchasers have also sued for treble damages under the "coconspirator" or "vertical conspiracy" theory. Under this theory, the direct purchaser is alleged to have conspired with the antitrust defendant. *See, e.g., Link v. Mercedes-Benz of N. Am.*, 788 F.2d 918, 929 (3d Cir. 1986). *Fontana Aviation, Inc. v. Cessna Aircraft Co.*, 617 F.2d 478 (7th

The plaintiffs allege the existence of a massive vertical conspiracy among the manufacturers and the wholesalers. Without the wholesalers as co-conspirators, however, the plaintiffs' allegations of such a conspiracy crumble. Absent the wholesalers, the viability of the plaintiffs' Sherman Act claims hinges upon the applicability of *Illinois Brick*. The issue thus becomes whether the plaintiffs' Sherman Act claims against the Manufacturer Defendants, absent the presence of the wholesaler middlemen, is barred by the Supreme Court's decision in *Illinois Brick v. Illinois*.

At first glance, the answer to this question would appear to be in the affirmative. The vast majority of prescription drugs purchased by retail pharmacies are supplied by wholesalers who, in turn, deal with the manufacturers. Retail pharmacies do not, in other words, receive their goods directly from the alleged antitrust offenders, i.e., the Manufacturer Defendants, Being indirect purchasers in the chain of distribution, *Illinois Brick* thus would seemingly bar the retail pharmacies from pursuing their Sherman Act claims against the drug manufacturers. A close examination of the evidence, however, does not yield this conclusion.

The gravamen of the plaintiffs Sherman Act claims is the defendants' "collusive" creation of a dual pricing system which raises or stabilizes the prices which retail pharmacies pay for brand name prescription drugs. In order to accomplish this goal, the plaintiffs submit evidence of a uniform refusal by the Manufacturer Defendants to make available to community pharmacies various discounts, rebates, and other price-lowering mechanisms that each of the Manufacturer

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Cir. 1980). Although the vertical conspiracy is termed an "exception" by most courts, *cf.*, *In re Brand Name Prescription Drugs Antitrust Litigation*, 867 F.Supp. 1338 (N.D.Ill. 1994) (*Illinois Brick* does not apply to allegations of vertical conspiracy), technically, the vertical conspiracy does not involve pass-on damages because the so-called "indirect purchaser" is the party directly injured by the antitrust violation. *Arizona v. Shamrock Foods, Co.*, 729 F.2d 1208, 1211 (9th Cir. 1984), *cert. denied*, 469 U.S. 1197 (1985). Although the plaintiffs' have alleged such a conspiracy in the present case, for the reasons stated in this opinion, such allegations have not been sufficiently demonstrated.

Defendants had made available to managed care. Although the plaintiffs contend otherwise, the evidence does nor suggest that the wholesalers were an integral component of such a conspiracy. Instead, the evidence shows that *the Manufacturer Defendants exercised total control over the principal pricing decisions, both with regards to the wholesalers and with regards to the purchasers at the level of retail pharmacies and managed care.* It was the manufacturers' pricing policy, and the manufacturers enforced it.

The record is replete with evidence suggesting that the Manufacturer Defendants alone decided not to afford discounts to the retail pharmacies. The wholesalers were not consulted regarding the no-discount policies prior to or during their implementation, nor was the wholesalers' position on the subject considered or given any significance Instead, the evidence suggests that the no-discount pricing policies which the plaintiffs allege actually harmed the wholesalers. The retail pharmacies constituted the wholesalers' greatest customer base—as the retailers became more disgruntled by the high prices they were forced to pay on account of the manufacturers' pricing policies, the wholesalers bore the impact of the complaints and realized very little profit.

It was the manufacturers alone who determined, regardless of reason, that no discounts would be afforded to the retail pharmacies. Similarly, it was the manufacturers who established the discounting policies afforded to managed care. Through the use of the chargeback system, discounts were negotiated as a matter of contract between the manufacturers and managed care. Although a wholesaler still technically supplied the drugs to the managed care customer, all of the major pricing decisions were made "directly" between the manufacturer and managed care, a so-called "indirect purchaser."

The wholesaler paid the manufacturer the price it charged for the goods (wholesale cost), and the manufacturer and the customer (purchaser of the wholesaler's goods) negotiated directly with respect to any discounts to be given. The whole-

saler's fee, negotiated directly by the wholesaler and customer, was a relatively modest portion of the total cost of the drugs to the purchaser. The wholesaler paid the same price for the drugs regardless of whether the customer was classified by the manufacturers as "preferred" or not. The manufacturers dictated to the wholesalers precisely who was or was not to receive discounts, what drugs were to be discounted, and exactly how much was to be charged. The wholesalers acquiesced by charging the manufacturers' "selected" preferred customers the prescribed discount, which was a price below the wholesalers' cost, and then receiving a reimbursement from the manufacturers for the difference.

Such benefits were not extended to the retail pharmacies, and given the way in which the chargeback system was structured by the manufacturers, the wholesalers were not in a financial position to stray from the manufacturers' preferred list. Simply put, the wholesalers functioned as glorified warehouses in these circumstances, facilitating transactions in accordance with the manufacturers' instructions. Under such a scheme, where the actions of the intermediary are so totally dictated by the alleged antitrust violator, we do not believe that the indirect purchaser rule of *Illinois Brick* should apply.

The Supreme Court in *Illinois Brick* articulated at least two major policy reasons for denying the indirect purchaser's recovery in a Sherman Act case. The first concern was that of multiple recovery. The Court reasoned that if indirect purchasers were permitted to sue for overcharges passed on to them from indirect sellers, a substantial risk of duplicative recovery would be created. *See Illinois Brick*, 431 U.S. at 737. Under *Hanover Shoe*, a seller could not raise a passing-on defense in a suit brought by intermediates, thus the intermediates could recover from the sellers the whole of the proven overcharge. If the indirect purchasers were also permitted to recover damages for the passed-on overcharges, multiple recovery would occur. The seller would be fully liable to both the intermediates and the indirect purchasers. *Illinois Brick* sought to avoid the unfairness of such a result.

The second policy notion with which *Illinois Brick* was concerned involved the complexities of tracing damages passed-on throughout the various stages of the chain of distribution. *Id.* The existence of the tracing issue derived from the difficulties encountered in attributing price increases, or any portion thereof, directly to the illegal overcharge as opposed to other forces which could affect the market (e.g., supply and demand). *In re Mid-Atlantic Toyota Antitrust Litigation*, 516 F.Supp. 1287, 1292-93 (D.Md. 1981), *aff'd*, 704 F.2d 125 (4th Cir. 1983). Thus, the concern in *Illinois Brick* focused upon the complexities of evaluating the injury which indirect purchasers sustained by illegal overcharges passed on through the distribution chain.

As the Supreme Court recognized in *Illinois Brick*, situations arise where these policy concerns are not implicated, and in such cases, the indirect purchaser rule has no application. As noted above, one such circumstance explicitly identified by the Supreme Court is that where the intermediate is under the control of the antitrust defendant. To the extent that this relationship unifies into one sale the transaction between the antitrust defendant and the indirect purchaser plaintiff, the policy concerns articulated in *Illinois Brick* do not apply, and the "indirect" purchaser's action will not be barred.

In the present case, strong support in the record exists for the notion that the wholesalers served as pseudo-warehouses, wielding little or no decisionmaking power with regard to their pricing policies. Wholesaler acquiescence was necessary for wholesaler survival. Without the manufacturers, the wholesalers could not exist. The reverse was certainly not true. Although the drugs were technically sold through wholesalers, the manufacturers effectively dictated the wholesalers' policies as to all of the so-called indirect purchasers. Certainly where managed care was concerned, the transaction from manufacturer to wholesaler to indirect purchaser was, in effect, one sale. The manufacturers set virtually all of the terms, the indirect purchaser (managed care) directly reaped the benefits, and the wholesalers continued to exist.

That same manufacturer control operated as well in the case of the retail pharmacies. As to these non-preferred indirect customers, the manufacturers decreed to the wholesalers that discounts were not to be given, and the wholesalers were in no financial position to stray from this directive. Once again, the manufacturers set all of the principal terms, the indirect purchaser (retail pharmacies) directly suffered the injury, and the wholesalers continued to exist. Under such a situation, where the manufacturers wielded such power over the wholesalers that they could altogether dictate the essential price the retail pharmacies were to pay, we do not believe that *Illinois Brick* applies. The pricing policies to be implemented at the wholesaler level were made exclusively by the manufacturers. Other than the wholesaler's fee, all of the critical pricing decisions regarding sales to managed care and to the plaintiffs were made by the manufacturers.

The plaintiffs allege that the Manufacturer Defendants' uniform refusal to provide them with the discounts provided to managed care caused the plaintiffs injury. Any harm sustained was the direct result of policies established by and within the exclusive control of the Manufacturer Defendants. The plaintiffs allege that they were harmed thereby, and it is clear that, under such circumstances, the plaintiffs were the only party harmed. Section 4 of the Clayton Act broadly provides: "any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor . . . and shall recover threefold the damages by him sustained . . . ." 15 U.S.C. § 15. To deny the plaintiffs in the present case the right to maintain its suit against the Manufacturer Defendants merely because the manufacturers have in place convenient middlemen for *Illinois Brick* protection would be to deny the plaintiffs any possibility for redress. Under the present circumstances, such a result would be improper.

Because we believe that the rationales set forth in *Illinois Brick* would not be furthered in the present case by disallowing the plaintiffs' claim against the manufacturers, the

defendants' motion for summary judgment as to the indirect purchaser claims is denied. The control which the manufacturers' exercised over the wholesalers and any "indirect purchaser" transactions conducted effectively deemed those transactions one sale. That being so, *Illinois Brick* cannot apply.

CONCLUSION

For the reasons set forth above, the Manufacturer Defendants' motions for summary judgment are denied. The Wholesaler Defendants' motions for summary judgment are granted. The defendants' motions for summary judgment as to the indirect purchaser claims are denied.

/s/ CHARLES P. KOCORAS
Charles P. Kocoras
United States District Judge

Dated: April 4, 1996

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

94 C 897
MDL 997

IN RE: BRAND NAME PRESCRIPTION DRUGS
ANTITRUST LITIGATION

This Document Relates to:
ALL CASES

MEMORANDUM OPINION

CHARLES P. KOCORAS, *District Judge*:

This matter is before the court on Class Plaintiffs' ("Plaintiffs") motion to declare Defendants' judgment sharing agreement unlawful. For the reasons set forth below, the plaintiffs' motion is denied.

THE JUDGMENT SHARING AGREEMENT

On or about October 26, 1994, the Manufacturer Defendants and the Wholesaler Defendants entered into a judgment sharing agreement ("Agreement"), apportioning liability among the defendants in the event of an adverse judgment. The Agreement, which, according to Defendants, provides an equitable method of apportioning any judgment entered

jointly against two or more Defendants, is divided into two parts. The first part, dealing with the Wholesaler Defendants, creates a defense fund under which the Manufacturer Defendants promise to reimburse the Wholesaler Defendants for the first $9 million in attorneys' fees and disbursements. In addition, the Agreement caps the Wholesaler Defendants' share of any liability at a specific dollar figure. In return, the Wholesaler Defendants agree to release the Manufacturers from any claims arising from conduct at issue in this case.

The second part of the Agreement provides a means of allocating liability among any Manufacturer Defendants who receive adverse judgments. With respect to one-half of those amounts, responsibility for payment is allocated according to the historic market share of the products of each Manufacturer Defendant. The remaining one-half of the payments also are distributed by historic market share except to the extent that one or more Defendants can affirmatively establish that the judgment being shared does not apply to one or more of its products.

With respect to settlements, the Agreement provides that any Defendant may settle at any time. However, any Defendant entering into a settlement with the plaintiffs of any or all of the claims against it will remain liable for the payment of any judgment obtained against any of the other defendants based upon sales of the settling defendant's products unless its settlement agreement expressly provides "that the Claimant or claimants with whom it has settled any Claim or Claims shall exclude from the dollar amount collectable from non-Settling Parties" the amount for which the non-settling defendant would have been responsible under the Agreement had it not settled and been found liable.

DISCUSSION

Judgment sharing agreements provide a mechanism by which Defendants may allocate a judgment entered jointly against more than one Defendant. In that antitrust law pro-

vides no other method of achieving this purpose, absent such an agreement, a successful antitrust Plaintiff conceivably could collect all of any judgment from one Defendant or a small group of Defendants. Because there is no right of contribution in antitrust cases, *see Texas Industries, Inc. v. Radcliff Materials, Inc.*, 451 U.S. 630 (1981), one Defendant with an otherwise insignificant role in the wrongdoing could be required to pay the full judgment amount, while others with greater culpability would pay nothing. Judgment sharing agreements have emerged as a means of ameliorating this harsh result.

Judgment sharing agreements have further been utilized as a means of discouraging coerced settlements. As the 1982 Report of the Senate Judiciary Committee on the Antitrust Equal Enforcement Act noted:

> One result of our present system is to allow plaintiff's counsel to settle relatively inexpensively with some defendants, thus placing great pressure on the remaining defendants to settle at a higher rate rather than run the risk of huge liability for not only their own damages but also for the damages of those who opted out early and cheaply.

1982 Senate Report at 3. Judgment sharing agreements minimize the likelihood of these coercive settlements by equitably apportioning any judgment that might be entered against the defendants.

The Class Plaintiffs' request this court to declare unlawful the defendants' judgment sharing agreement. The plaintiffs contend that the Agreement encourages future intentional violations of the law, provides insurance for future intentional violations of the law, and unreasonably discourages and prevents settlements. Each one of these assertions will be addressed below.

A. Encourages Future Intentional Violations of the Law

The Class Plaintiffs argue that Defendants' judgment sharing agreement is unlawful because it applies to conduct occurring after the Agreement was signed, thus perpetuating unlawful future activities by the defendants. We note that the defendants' Agreement does apply prospectively in the sense that the liability apportionment is established through the time of eventual judgment.[1] We do not believe, however, that this constitutes an encouragement of future intentional violations.

Unless or until judgment is entered against the defendants, the activities of the defendants are not presumed to be unlawful. Only after an entry of judgment against them will the defendants be deemed liable to the plaintiffs, and it is at this time that the judgment sharing agreement operates to apportion the damages owed by each defendant. The defendants under the Agreement remain potentially liable to the plaintiffs for three times of all of the proven damages, both past and future. The Agreement does not extinguish any part of the plaintiffs' claim. By definition, judgment sharing agreements share the judgment, and in this limited manner, they are permitted to apply prospectively. The possible condonation of future antitrust violations under the Agreement does not outweigh the overall benefits served by the existence of the Agreement.

The Class Plaintiffs argue that the Agreement unlawfully impedes the likelihood that any Defendants will withdraw from "the cartel." For example, by placing a specific dollar amount on any liability of the Wholesaler Defendants, the Wholesaler Defendants would have little incentive to abandon any alleged transgressions and would be more prone to maintain their "illegal" alliance with the Manufacturers. The Defendants contend, however, that the limitation on the liability of the Wholesaler Defendants is merely the result of the Wholesalers' limited role in the alleged conspiracy. The

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[1] Defendants' Agreement provides that it applies to claims for damages "extending up to the time of trial." *See* Agreement § 2.3.

Wholesalers are not alleged to be the recipients of any high profits, nor are they alleged to have played any role in deciding whether a particular type of pharmacy received a discount.[2] Indeed, to the extent that the Wholesaler Defendants' share of any judgment is too small, the Manufacturer Defendants would become responsible for the difference, thereby increasing the potential liability to the Manufacturer Defendants. In any case, the amount of any eventual recovery owed to the plaintiffs would not be depleted.

The plaintiffs further contend that the Agreement diminishes any incentive on the part of a Manufacturer Defendant to withdraw from the alleged conspiracy, because as to one half of any judgment, the Manufacturer would remain liable for its "historic market share." We note, however, that any Manufacturer who might choose to withdraw would not remain jointly and severally liable for damages attributable to post-withdrawal actions by the members of the conspiracy. In that the Agreement provides that a defendant must only share in a judgment "or part thereof" for which it is found to be jointly liable, no defendant would have any responsibility under the Agreement for damages caused by conduct subsequent to withdrawal by that defendant. The Agreement thus does not operate wholly to dissuade a Defendant's desire to withdraw from the alleged conspiracy. An important incentive remains.

B. Insures Against Future Violations of Law

The Class Plaintiffs contend that the Defendants' Agreement is unlawful in that it provides improper "insurance" against intentional violations of the antitrust laws. In support of this argument, the Class Plaintiffs primarily cite the Agreements' provisions as they relate to the Wholesaler Defendants, whose is capped at $1 million. The Class Plaintiffs assert that

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[2] It is worthy of note that, earlier in the litigation, the Class Plaintiffs offered to drop their claims against the Wholesaler Defendants for no money and no injunctive relief.

such a cap on liability is unlawful as an agreement to insure against intentional violations of the law. *See Solo Cup Co. v. Federal Insurance Co.*, 619 F.2d 1178, 1187 (7th Cir. 1980), *cert. denied*, 449 U.S. 1033 (1980). We disagree. The Agreement differs from most contracts or "insurance" in that it does not provide for the payment of a judgment by some third party not involved in the allegedly unlawful conduct. As it relates to the Wholesaler Defendants, the Agreement responsibility for payment merely affords a means of allotting responsibility for payment of any joint and several judgment among responsible parties. We do not believe that the Agreement effectively insures against future violations of law.

C. Unreasonably Discourages and Prevents Settlements

The Class Plaintiffs contend that Defendants judgment sharing agreement impedes any possibility of settlement by freeing a settling Defendant of its sharing obligations only if it secures an agreement from the plaintiffs which carves out the settling defendant's share from any final judgment in the case. Studies conducted by the Senate Judiciary Committee and by the Antitrust Section of the American Bar Association have concluded that sharing agreements in practice do not pose a barrier to individual settlements. *See 1979 Senate Report* at 2, 13-17, 19-20; *1982 Senate Report* at 9-3, 18-22; *ABA Report*, 49 Antitrust L.J. at 295. Rather, as discussed above, judgment sharing agreements provide a means of discouraging coerced settlements. In order to accomplish this task, judgment sharing agreements commonly provide:

> . . . that if any signatory defendant settles, it must require the plaintiff to reduce any ultimate judgment against the other signatories by the settling defendant's percentage share of liability under the agreement. Alternatively, the settling defendant remains contractually liable to the other signatories for its share of the judgment.

Hearings Before the United States House of Representatives Committee on the Judiciary, Subcommittee on Monopolies

and Commercial Law, on Antitrust Damage Allocation, 97th Cong., 1st & 2nd Sessions, at 135 (1982) (prepared statement of Robert P. Taylor). The defendants' Agreement reflects this paradigm.

Absent a judgment sharing agreement, plaintiffs' attorneys are primed to exploit the immense exposure of the last defendant to settle. The plaintiffs "take small amounts. . . . at the beginning of the settlement process" and larger amounts as time progresses. *1982 Senate Hearings* at 482 (testimony of Stephen D. Susman). The relative culpability of the defendant is no longer pertinent. Instead, a sort of "game theory" element emerges. Where, as under most judgment sharing agreements, each defendant is responsible for damages relating to its own sales, however, the "game theory" element of the settlement process is eliminated. "[S]ettlement discussions occur on a more rational basis. . . and settlement is thus promoted." *ABA Report*, 49 Antitrust L.J. at 295. Given the real threat of otherwise coerced settlements and the benefits of achieving judgment based on some degree of relative fault, we do not believe that the defendants' judgment sharing agreement acts as an improper barrier to settlements. The defendants' judgment sharing agreement is not unlawful.

D. Discovery of Agreement Negotiation Materials

The Class Plaintiffs' seek discovery relating to the negotiation of the defendants' judgment sharing agreement. Judgment sharing agreements are, in effect, a form of settlement, and drafts of settlements and settlement negotiations among counsel are generally not discoverable. *See Mars Steel Corp. v. Continental Illinois Nat'l Bank & Trust Co.*, 834 F.2d 677, 683-84 (7th Cir. 1987). As such, we deny the Class Plaintiffs' request.

CONCLUSION

For the reasons set forth above, Class Plaintiffs' motion is denied.

/s/ CHARLES P. KOCORAS
Charles P. Kocoras
United States District Judge

Dated: April 10, 1995

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

94 C 897

IN RE: BRAND NAME PRESCRIPTION DRUGS
ANTITRUST LITIGATION

This Document Relates to:
ALL CASES

MEMORANDUM OPINION

CHARLES P. KOCORAS, *District Judge*:

This matter is before the court on the Manufacturer Defendants' motion for certification for interlocutory appeal. On October 18, 1994, this court issued an order denying the Manufacturer Defendant's motion for summary judgment. In that motion, the Manufacturer Defendants argued that the plaintiffs were indirect purchasers within the meaning of *Illinois Brick Co. v. Illinois*, 431 U.S. 720 (1977). In denying the defendant's motion, we held that *Illinois Brick* had no application to cases involving allegations of vertical conspiracy and thus posed no bar to the plaintiffs' claims. Subsequent to the issuance of the October 18, 1994 Order, the Manufacturer Defendants moved to have the issue certified for interlocutory appeal. For the reasons set forth below, the defendant's motion is denied.

DISCUSSION

The Manufacturer Defendants seek to have the following issue certified for interlocutory appeal: In a private antitrust action under Section 1 of the Sherman Act, 15 U.S.C. § 1, and Section 4 of the Clayton Act, 15 U.S.C. § 15, involving an alleged conspiracy between and among manufacturer and wholesaler defendants, which results in higher manufacturer prices on goods purchased by wholesalers and resold to retailer plaintiffs, do *Kansas v. UtiliCorp United, Inc.*, 497 U.S. 199 (1990), and *Illinois ex rel. Burris v. Panhandle E. Pipe Line Co.*, 935 F.2d 1469 (7th Cir. 1991), *cert. denied*, 112 S.Ct. 1169 (U.S. 1992), bar retail purchasers from suing the manufacturers for damages based upon prices that were allegedly inflated at the manufacturer level?

As a general proposition, "permission to take an interlocutory appeal should be granted sparingly and with discrimination." *In re Folding Carton Antitrust Litigation*, 75 F.R.D. 727, 738 (N.D.Ill. 1977). Certification is the exception and not the rule. *Zygmuntowicz v. Hospitality Invs.*, 828 F.Supp. 346, 353 (E.D.Pa. 1993). When deciding a motion for certification, the district court must consider the following factors: (1) whether the motion to be appealed involves a controlling question of law; (2) whether there is a substantial ground for difference of opinion on that question of law; and (3) whether an immediate appeal from the order may materially advance the ultimate termination of the litigation. 28 U.S.C. § 1292(b); *Segni v. Commercial Office of Spain*, 650 F.Supp. 1045, 1046 (N.D.Ill. 1987). Although the issue to be appealed involves a controlling question of law, we find that the other two factors set forth in § 1292(b) have not been satisfied. As such, the defendant's motion for certification must be denied.

A. Substantial Grounds for Difference of Opinion

Interlocutory review "should not be used merely to provide review of difficult rulings in hard cases." *McCann v.*

Communications Design Corp., 775 F.Supp. 1506, 1534 (D.Conn. 1991) (citing *United States Rubber Co. v. Wright*, 359 F.2d 784, 785 (9th Cir. 1966)). Rather, the existence of a "difficult central question of law which is not settled by controlling authority" must be demonstrated. *In re Heddendorf*, 263 F.2d 887, 889 (1st Cir. 1959). If the controlling court of appeals has ruled on a question, then no substantial ground for difference of opinion exists, and there is no reason for immediate appeal. See *Walker v. Eastern Air Lines, Inc.*, 785 F.Supp. 1168, 1174 (S.D.N.Y. 1992). Where a controlling court of appeals has not decided an issue, it must still be demonstrated that a "substantial likelihood" exists that the district court ruling will be reversed on appeal. *TCF Banking and Sav., F.A. v. Arthur Young & Co.*, 697 F.Supp. 362, 366 (D.Minn. 1988).

In *Fontana Aviation, Inc. v. Cessna Aircraft Co.*, 617 F.2d 478 (7th Cir. 1980), an aircraft dealer, alleging a conspiracy between the aircraft manufacturer and the aircraft distributor, brought suit against the manufacturer charging antitrust violations. The Seventh Circuit held that *Illinois Brick* did not bar the plaintiff dealer's claim. *Id.* at 480. In its discussion of *Illinois Brick's* applicability to the situation, the Seventh Circuit proclaimed:

> We are not satisfied that the *Illinois Brick* rule directly applies in circumstances where the manufacturer and the intermediary are both alleged to be co-conspirators in a common illegal enterprise resulting in intended injury to the buyer.

Id. at 481. Thus, in *Fontana*, the Seventh Circuit indicated that the "co-conspiracy intermediary issue" was not within the realm of *Illinois Brick* and was no bar to the plaintiff's suit. Based on the Seventh Circuit's ruling in *Fontana*, we concluded that *Illinois Brick* had no application to cases involving allegations of vertical conspiracy.

The Manufacturer Defendants assert, however, that two recent cases, i.e., the Supreme Court's decision in *Utilicorp*

and the Seventh Circuit's decision in *Panhandle II*, serve to bar the plaintiffs in the present case. Notwithstanding the fact that both *Utilicorp* and *Panhandle II* concerned only the narrow "cost-plus" exception to *Illinois Brick*—an issue not present here—, the defendants maintain that these cases mandate the dismissal of vertical conspiracy cases where the plaintiff purchases directly from a wrongdoer. We disagree.

In neither case was a vertical conspiracy alleged. The consumers in *Utilicorp* and *Panhandle II* were plainly indirect purchasers who bought from an innocent party. *Illinois Brick* was therefore applicable, and the only question was whether the cost-plus exception to the indirect purchaser rule would be recognized because the plaintiffs purchased from regulated utilities. *Panhandle II*, 935 F.2d at 1476. The reviewing courts declined to interpret the cost-plus exception as applying to purchases from utilities. *Id.* at 1477-79.

The defendants argue that this judicial reluctance to expand the cost-plus exception to *Illinois Brick* translates into a sweeping prohibition of suits against entities occupying the uppermost tier of a vertical conspiracy, even where the plaintiffs purchase directly from a wrongdoer. In support of this argument, the defendants quote *Panhandle II* for the proposition that the "broader point" of the Supreme Court's decision in *Utilicorp* was that *Illinois Brick* should be applied even if the economic assumptions underlying that decision are not met. However, the discussion in *Panhandle II* concerned only the proper scope of the cost-plus exception. *Panhandle II* 935 F.2d at 1478. Taken in context, *Panhandle II* held only that even where the economic assumptions which justify the indirect purchaser rule are not met, the cost-plus exception should not be expanded. *Id.* Such a holding has no bearing upon a case involving allegations of vertical conspiracy. The Seventh Circuit's decision in *Fontana* remains the controlling law on that issue.

Contrary to the Manufacturer Defendants' assertions, *Utilicorp* and *Panhandle II* do not even arguably address the issue of whether vertical conspiracies are encompassed by *Illinois*

Brick. *Fontana* continues to be good law, and the issue on which the defendants seek interlocutory review remains settled in the Seventh Circuit. No substantial grounds for difference of opinion have been shown.

B. Material Advancement of the Termination of This Litigation

Unless reversal of the critical issue would substantially accelerate the ultimate termination of the litigation, an interlocutory appeal is unwarranted. Thus, in cases such as the present one, where the pertinent question is relevant only to one of several claims, the courts have held that an immediate appeal will not materially advance the termination of the case, and interlocutory review should be denied. *U.S. Rubber Co. v. Wright*, 359 F.2d 784, 785 (9th Cir. 1966); *Midwest Milk Monopolization Litigation*, 380 F.Supp. 880, 888 (W.D.Mo. 1974) (denying certification because disputed question of law affected only some antitrust claims made by some claimants).

This court's October 18, 1994 Order addresses only the ability of some of the plaintiffs to seek damages under § 4 of the Clayton Act.[1] Regardless of whether they are deemed indirect purchasers under *Illinois Brick*, however, all of the plaintiffs may still pursue injunctive relief under § 16 of the Clayton Act. *See, e.g., In re Beef Industry Antitrust Litigation*, 600 F.2d 1148, 1167 (5th Cir. 1979) (concluding that *Illinois Brick* does not bar suits for injunctive relief by indirect purchasers). As a result, even if this court's ruling were to be reversed by the Seventh Circuit, the vertical conspiracy claims by the plaintiffs against the Manufacturer Defendants would continue. Only the form of the relief sought would be altered. It is worth noting that even if some of the damage claims were excluded, the plaintiffs would still be required to

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[1] The plaintiffs allege that at least twenty percent of the Manufacturer Defendants' sales are made *directly* to retail pharmacies. Thus, even if the Seventh Circuit were to reverse this court's ruling, the damage claims for direct purchases by the individual plaintiffs from the Manufacturer Defendants would remain.

prove injury caused by the illegal vertical conspiracies in order to obtain injunctive relief. *Cargill, Inc. v. Monfort of Colorado, Inc.*, 479 U.S. 104, 111-12 (1986). Thus, much of the same evidence which would be required in a case for damages would still be necessary in a suit for injunctive relief. The same holds true for the individual plaintiffs' Robinson-Patman Act claims. Robinson-Patman Act claims are not subject to the indirect purchaser rule of *Illinois Brick. See, e.g., White Industries v. Cessna Aircraft Co.*, 657 F.Supp. 687, 702-03 (W.D.Mo. 1986), *aff'd*, 845 F.2d 1497 (8th Cir. 1988), *cert. denied*, 488 U.S. 856 (1988). As with the plaintiffs' claims for injunctive relief, the Robinson-Patman Act claims involve damage calculations which would include much of the evidence and economic theory applicable to the plaintiffs' vertical conspiracy damage calculations. Thus, even if this court's *Illinois Brick* ruling were reversed, this massive case would continue. Damage calculations might ultimately be simplified, but most of the damage issues would remain.

Certification for interlocutory appeal would not materially advance the ultimate termination of this litigation as required under § 1292(b). The Manufacturer Defendants' motion is therefore denied.

CONCLUSION

For the reasons set forth above, the Manufacturer Defendants' motion to certify for interlocutory appeal our October 18, 1994 Order denying the Manufacturer Defendants' motion for summary judgment is denied.

/s/ CHARLES P. KOCORAS
Charles P. Kocoras
United States District Judge

Dated: January 4, 1995

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

94 C 897

IN RE: BRAND NAME PRESCRIPTION DRUGS
ANTITRUST LITIGATION

This Document Relates to:
ALL CASES

MEMORANDUM OPINION

CHARLES P. KOCORAS, *District Judge*:

This matter is before the Court on five Motions for Summary Judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure.

First, the Wholesaler Defendants[1] move for Summary Judgment on plaintiffs' claims against them in the Consolidated and Amended Complaint under § 1 of the Sherman Act, 15 U.S.C. § 1. According to the Wholesaler Defendants, the plaintiffs' chargeback allegations find no support in either fact or law.

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[1] The Wholesaler Defendants are as follows: Alco Health Services Corporation; Bergen Brunswig Corp.; Bindley Western Corporation; Cardinal Distrubution, Inc.; FoxMeyer Drug Company; McKesson Corporation; and Whitmire Distrubution Corporation.

Next, the Manufacturer Defendants[2] move for Judgment on the Pleadings pursuant to Rule 12(c) of the Federal Rules of Civil Procedure, or in the alternative for Summary Judgment, dismissing the indirect purchaser claims asserted against them in the Consolidated and Amended Complaint. As grounds for their motion, the Manufacturer Defendants maintain that the putative class plaintiffs, as indirect purchasers, lack standing under *Illinois Brick Co. v. Illinois*, 431 U.S. 720 (1977).

Finally, Defendant Burroughs Wellcome, Co. ("Burroughs Wellcome") moves for Summary Judgment in its favor on certain[3] individual plaintiffs' Sherman Act claims for treble damages under § 4 of the Clayton Act, 15 U.S.C. § 15. In support of its motion Burroughs Wellcome asserts that the plaintiffs in the various individual actions, with the exception of Plaintiff Albertson's Inc., have not purchased brand-name prescription drugs directly from Burroughs Wellcome. Accordingly, Burroughs Wellcome claims that under *Illinois Brick*, the plaintiffs who are indirect purchasers are barred from recovering treble damages under § 4 of the Clayton Act.[4]

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[2] The Manufacturer Defendants named in the Consolidated and Amended Complaint are as follows: Abbott Laboratories; American Cyanamid Company; American Home Products Corporation; Knoll Pharmaceutical Company, Bristol-Myers Squibb Company; Burroughs-Wellcome Company; Ciba-Geigy Corporation; The DuPont Merck Pharmaceutical Company; Eli Lilly and Company; Forest Laboratories, Inc.; G.D. Searle & Company; Glaxo, Inc.; Johnson & Johnson; Marion Merrell Dow, Inc.; Merck & Company, Inc.; Pfizer, Inc.; Rhone-Poulenc Rorer, Inc.; Sandoz Pharmaceuticals Corporation; Schering-Plough Corporation; SmithKline Beecham Pharmaceuticals Company; The Upjohn Company; Warner-Lambert Company; and Zenca, Inc..

[3] *See* Motion of Defendant Burroughs Wellcome Co. For Summary Judgment.

[4] The following three defendants have filed separate motions for summary judgment incorporating by reference and adopting as their own the arguments asserted in Defendant Burroughs Wellcome's Motion for Summary Judgment: Defendant Merck & Co. ("Merck"); Defendant Rhone-Poulenc Rorer Pharmaceuticals ("RPR"), Inc.; and Defendant Schering-Plough Corporation ("Schering-Plough").

Each motion will be addressed below. Before proceeding, however, we first examine the legal standard from which to judge a motion for summary judgment.

LEGAL STANDARD

Summary judgment is appropriate if the pleadings, answers to interrogatories, admissions, affidavits and other material show "that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." Fed. R.Civ. P. 56(b). "Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). The party seeking summary judgment carries the initial burden of showing that no such issue of material fact exists. The moving party may discharge this burden by " 'showing'. . . that there is an absence of evidence to support the nonmoving party's case. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). Pursuant to Rule 56(b), when a properly supported motion for summary judgment is made, the adverse party must set forth specific facts showing that there is a genuine issue as to any material fact and that the moving party is not entitled to judgment as a matter of law. *Anderson*, 477 U.S. at 250.

In making our determination, we are to draw inferences from the record in the light most favorable to the non-moving party. We are not required, however, to draw every conceivable inference, but rather, only those that are reasonable. *De Valk Lincoln Mercury, Inc. v. Ford Motor Co.*, 811 F.2d 326, 329 (7th Cir. 1987); *Bartman v. Allis-Chalmers Corp.*, 799 F.2d 311, 313 (7th Cir. 1986), *cert. denied*, 479 U.S. 1092 (1987). The nonmovant may not rest upon mere allegations in the pleadings or upon conclusory statements in affidavits; rather he must go beyond the pleadings and support his contentions with proper documentary evidence. *Celotex*, 477 U.S. at 324; *Howland v. Kilquist*, 833 F.2d 639, 642 (7th Cir. 1987).

The plain language of Rule 56(c) mandates the entry of summary judgment against a party who fails to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. *Celotex*, 477 U.S. at 322. "In such a situation there can be 'no genuine issue as to any material fact,' since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial". *Id.* at 323.

It is in consideration of these principles that we examine the various motions before us.

DISCUSSION

I. The Wholesaler Defendants' Motion for Summary Judgment

The Wholesaler Defendants move for summary judgment in their favor on the allegations asserted against them in plaintiffs' Consolidated and Amended Complaint. According to the Wholesaler Defendants, the plaintiffs' § 1 Sherman Act claims against them must fail as a matter of indisputable fact and law.

The Wholesaler Defendants contend that there is no triable issue on the question of whether they had conspired to "fix, raise, maintain and stabilize the prices of Prescription Brand Name Drugs sold to the plaintiffs and the [putative] class members at supra-competitive levels." Consolidated and Amended Class Action Complaint at ¶ 79. As the Wholesaler Defendants see it, the plaintiffs' conspiracy allegations, as they relate to the Wholesalers, are based *only* upon chargeback agreements entered into by each Wholesaler with the Manufacturer Defendants. The Wholesaler Defendants contend that as a matter of undisputable fact, the chargeback agreements[5] do not fix or restrict the prices at which the

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[5] Representative examples of these chargeback agreements, along with supporting Affidavits, have been submitted for our review. *See* Appendix A to the Wholesaler Defendants' Motion for Summary Judgment.

Wholesalers can sell the Manufacturers' products to plaintiffs. Thus, argue the Wholesalers, since these chargeback agreements are legal on their face and do not directly involve the plaintiffs, the plaintiffs' conspiracy allegations against the Wholesaler Defendants must fail. We do not agree with the Wholesaler Defendant's approach of fragmenting and compartmentalizing the factual components of the plaintiffs' conspiracy claim.

First of all, in their Consolidated and Amended Complaint, the plaintiffs allege that the Manufacturer Defendants and the Wholesaler Defendants entered into and are engaging in "a continuing nationwide contract, combination and/or conspiracy in the unreasonable restraint of trade and commerce . . . in violation of Section 1 of the Sherman Act." Consolidated and Amended Class Action Complaint at ¶ 78. The plaintiffs further allege that the substantial terms of this conspiracy were "to fix, raise, maintain and stabilize the prices of Prescription Brand Name Drugs sold to the plaintiffs and the class members at supra-competitive levels." *Id.* at ¶ 79. With respect to the Wholesaler Defendants' involvement in this scheme, the plaintiffs' allege that the Manufacturers and Wholesalers have implemented and have contracted to implement a "chargeback" system which has the effect of: (1) "fixing, raising, maintaining and stabilizing at above competitive levels prices charged to class members for Prescription Brand Name Drugs," *Id.* at ¶ 80(b); and (2) "preclud[ing] the wholesalers from reselling the Prescription Brand Name Drugs to Drug Stores at the much lower prices made available to Institutional Pharmacies," *Id.* at ¶ 80(d).

Plaintiffs contest the Wholesaler Defendants' motion essentially arguing that the Wholesaler Defendants have missed the mark. According to the plaintiffs they are not claiming that the chargeback agreements submitted by the Wholesaler Defendants standing alone and on their face are illegal. Rather, the plaintiffs are claiming that these chargeback agreements are simply *one* component of a single unitary scheme between and among the Manufacturer Defendants

and the Wholesalers to-artificially raise, fix, maintain and stabilize the price at which brand name prescription drugs are sold to plaintiffs and the putative class members. Thus, according to the plaintiffs, the content of the Manufacturer-Wholesaler agreements is insufficient to support entry of summary judgment.

We agree with the plaintiffs that summary judgment may not be entered at this time. Although the Wholesaler Defendants have sufficiently demonstrated that the chargeback agreements do not specifically deal with the prices the plaintiffs pay, the defendants have failed to establish that there is no issue of material fact as to plaintiffs allegations that the Wholesalers participated in an antitrust violation. In an attempt to dispose of this action at an early stage, the Wholesaler Defendants have fragmented and compartmentalized the plaintiffs' conspiracy allegations and have asked us to look at their conduct apart from the Manufacturer Defendants' alleged conduct, and apart from the other allegations of the complaint. The United States Supreme Court, however, has expressly admonished against such an approach:

> In [conspiracy anti-trust cases] plaintiffs should be given the full benefit of their proof without tightly compartmentalizing the various factual components and wiping the slate clean after scrutiny of each. ". . . The character and effect of a conspiracy are not to be judged by dismembering it and viewing its separate parts, but only by looking at it as a whole. *United States v. Patten*, 226 U.S. 525, 544 (1913). . . ; and in a case like the one before us, the duty of the jury was to look at the whole picture and not merely at the individual figures in it.

Continental Ore Co v. Union Carbide & Carbon Corp., 370 U.S. 690, 698-99 (1962) (quoting *American Tobacco Co. v. United States*, 147 F.2d 93, 106 (6th Cir. 19—)).

Here, in their Amended and Consolidated Complaint, the plaintiffs are not alleging that the chargeback agreements, standing alone, constitute anti-trust violations. Rather, the

plaintiffs specifically allege that the use of chargeback agreements between the Wholesaler Defendants and the Manufacturer Defendants was one form of concerted action which the defendants engaged in to fix prices. *See* Consolidated and Amended Complaint at ¶80(a)-(g). In light of the U.S. Supreme Court's cautionary warning in *Continental Ore*, we will not isolate the allegations against the Wholesaler Defendants' and rule on the propriety of their individual acts in the face of the lager scheme pled.

In their Reply Memorandum, the Wholesaler Defendants contend that summary judgment must be entered in their favor because the plaintiffs have not satisfied their burden of coming forward with evidence that " 'tends to exclude the possibility' that the alleged co-conspirators acted independently." *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 588 (1986), *cert. denied*, 481 U.S. 1029 (1987) (quoting *Monsanto Co. v. Spray-Rite Service Corp.*, 465 U.S. 752, 764 (1984), and other cases cited therein). On the contrary, it is the Wholesaler Defendants, as the moving party, that have not satisfied its initial burden of showing that it is entitled to summary judgment. As the U.S. Supreme Court recently observed, *Matsushita*'s requirement that plaintiffs' claims make "economic sense" did not change the burden carried by a plaintiff facing summary judgment in an antitrust case:

> The [*Matsushita*] Court did not hold that if the moving party enunciates *any* economic theory supporting its behavior, regardless of its accuracy in reflecting the actual market, it is entitled to summary judgment. *Matsushita* demands only that the nonmoving party's inferences be reasonable in order to reach the jury, a requirement that was not invented, but merely articulated, in that decision. (footnote omitted).

Eastman Kodak Co. v. Image Technical Sens., — U.S. —, —, 112 S.Ct. 2072, 2083 (1992). The Court in *Eastman Kodak* further observed that the moving party in an antitrust case bears "a substantial burden" in establishing that it is entitled to summary judgement. *Id.* Here, we find that the

Wholesaler Defendants have failed to meet that burden. Although the chargeback agreements do not, as argued by the Wholesaler Defendants, specifically deal with the prices the plaintiffs pay, the plaintiffs have made a efficient showing, at least at this point, that it is not unreasonable to conclude that these agreements are a part of an overall unitary chargeback scheme.

Essentially, whether the chargeback agreements are an element of an overall illegal scheme among the defendants is a disputed issue of material fact. Accordingly, mindful of the U.S. Supreme Court's admonition that summary judgment should be used sparingly in complex antitrust cases unless the record is clear that the antitrust claims cannot succeed, *Wigod v. Chicago Mercantile Exchange*, 981 F.2d 1510, 1514 (7th Cir. 1992), we will not grant the Wholesaler Defendants' motion for summary judgement at this time.

II. The Manufacturer Defendants' Motion for Judgment on the Pleadings or, in the alternative, for Summary Judgment

The Manufacturer Defendants' move for judgment on the pleadings, or in the alternative, for summary judgment in their favor. After the close of pleadings, a Defendant may, pursuant to Rule 12(c) of the Federal Rules of Civil Procedure, move for judgment on the pleadings to dispose of the case on the basis of the underlying substantive merits. The appropriate standard for a judgment on the pleadings is that applicable to summary judgment, except that the court may consider only the contents of the pleadings. *Alexander v. City of Chicago*, 994 F.2d 333, 336 (7th Cir. 1993). Thus, all well-pleaded allegations in the plaintiffs' pleadings are taken as true, and the facts and inferences to be drawn from those allegations are viewed in a light most favorable to the plaintiffs. *Id.* The granting of a Rule 12(c) motion will not be affirmed unless no genuine issues of material fact remain to be resolved and unless the [Defendant] is entitled to judgment as a matter of law. *Id.*

The Manufacturer Defendants assert that they are entitled to judgment as a matter of law because plaintiffs, as indirect purchasers, lack standing to bring their asserted claims against them. In support of their argument, the Manufacturer Defendants cite the United States Supreme Court's decision in *Illinois Brick Co. v. Illinois*, 431 U.S. 720 (1977).

In *Illinois Brick*, plaintiff, the State of Illinois, brought suit against the manufacturers and distributors of concrete blocks, alleging a conspiracy to fix prices in violation of the antitrust laws. The concrete blocks were sold by the manufacturers to masonry contractors who used them in masonry structures. General contractors then used these structures in buildings which were ultimately sold to the state. *Illinois Brick*, 431 U.S. at 726-27. The plaintiff claimed that the intermediaries in the chain of distribution, the masonry contractors and general contractors, "passed on"[6] the increased fixed prices to the plaintiffs. The Supreme Court denied the plaintiffs recovery, holding that as an indirect purchaser in the chain of distribution, the plaintiff was precluded from seeking damages for illegal overcharges passed on to the plaintiff by intermediates in the distribution chain who purchased directly from the manufacturers.[7] *Id.*, 431 U.S. at 746.

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[6] "Pass-on" is a process by which an entity in a chain of distribution adjusts its price upward to compensate for an overcharge by a prior party in the chain. Comment, The Indirect Purchaser's Right to Sue Under Section 4 of the Clayton Act: Another Congressional Response to Illinois Brick, 32 Am. U.L. Rev. 1087, 1087 n.2 (1983). Normally, this occurs when sellers pass on costs downward in the chain of distribution from the manufacturer to the ultimate purchaser. *Id.* However, the reverse can also occur. *Id.* Passing on costs spreads the effect of anticompetitive activity beyond the direct purchaser or seller to all buyers and sellers in the chain of distribution. *Id.* The result is that the ultimate buyer or seller often bears the cost of the overcharge. *See* Note, Scaling the Illinois Brick Wall: The Future of Indirect Purchasers in Antitrust Litigation, 63 Cornell L. Rev. 309, 311 (1978).

[7] In so holding, the Court relied upon its earlier decision in *Hanover Shoe v. United Shoe Mach. Corp.*, 392 U.S. 481 (1968). In *Hanover Shoe*, the Court held that an antitrust violator could not defend a suit by a direct purchaser on the basis that the purchaser had not been

The Defendant Manufacturers analogize their situation to that of the block manufacturer defendants in *Illinois Brick* and assert that, as in *Illinois Brick*, the plaintiffs, as indirect purchasers, are precluded from bringing suit against them. The plaintiffs, however, insist that *Illinois Brick* does not bar their suit against the Manufacturer Defendants. The plaintiffs argue that their claim against the Manufacturer Defendants is not for overcharges "passed on" by the wholesalers, such as the type that would be barred by *Illinois Brick*. On the contrary, the plaintiffs allege overcharges *directly* imposed on the plaintiffs by both the manufacturers and the wholesalers as a part of a price-fixing conspiracy in which all of the Defendants were participants. *See* Consolidated and Amended Class Action Complaint at ¶ 80.

The issue before the Court, therefore, is whether *Illinois Brick* precludes the plaintiffs from maintaining a suit against the Manufacturer Defendants based on allegations of a vertical, two-tiered conspiracy between the wholesalers and the manufacturers. The Seventh Circuit entertained the issue in *Fontana Aviation, Inc. v. Cessna Aircraft Co.*, 617 F.2d 478 (7th Cir. 1980). In *Fontana*, an aircraft dealer, alleging a conspiracy between the aircraft manufacturer and the aircraft distributor, brought suit against the manufacturer charging antitrust violations. The Seventh Circuit held that *Illinois Brick* did not bar the plaintiff dealer's claim because the plaintiff did not seek damages for unlawful indirect overcharges passed on to it. *Id.* at 480. Rather, the plaintiff sued on the basis of a conspiracy consisting of a combination of acts designed to cause plaintiff competitive injury. *Id.* In its discussion of *Illinois Brick*'s applicability to the situation, the Seventh Circuit stated:

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injured because it had passed on an illegal overcharge to its own customers. *Hanover Shoe*, 392 U.S. at 494. *Illinois Brick* involved the offensive use of this pass-on theory. The Court reasoned that symmetry required a bar of the offensive use of the pass-on rationale by indirect purchasers in the distribution chain. *Illinois Brick*, 431 U.S. at 736.

> We are not satisfied that the *Illinois Brick* rule directly applies in circumstances where the manufacturer and the intermediary are both alleged to be co-conspirators in a common illegal enterprise resulting in intended injury to the buyer.

Id. at 481. Although the court's decision regarding the inapplicability of *Illinois Brick* ultimately rested on several factors (including the co-conspirator factor), the *Fontana* court seemed to indicate that the "co-conspiracy intermediary issue" was not within the realm of *Illinois Brick* and thus was no bar to the plaintiff's suit.

Four years later, the Ninth Circuit relied upon *Fontana* in deciding *Arizona v. Shamrock Foods Co.*, 729 F.2d 1208 (9th Cir. 1984), *cert. denied*, 469 U.S. 1197 (1985). In *Shamrock Foods*, the Ninth Circuit held that *Illinois Brick* did not bar plaintiff consumers from alleging that retail intermediates, i.e., grocery stores, were engaged in a conspiracy with dairy producers to fix the prices of dairy products at the retail level. *Id.* at 1211. The plaintiff asserted and the court agreed that because the damages were attributable to the fixed prices at the retail level, not at the wholesale level, there were no pass-on damages and *Illinois Brick* did not apply. *Id.*

Other courts have similarly concluded that, amidst allegations of sellers conspiring with intermediates in the distribution chain, *Illinois Brick* is no bar. *See, e.g., In re Mid-Atlantic Toyota Antitrust Litigation*, 516 F.Supp. 1287 (D.Md. 1981), *and aff'd*, 704 F.2d 125 (4th Cir. Md. 1983); *Reiter v. Sonotone Corp.*, 486 F.Supp. 115 (D.Minn. 1980); *Zenith Radio Corp. v. Matsushita Electric Industrial Co.*, 494 F.Supp. 1246 (E.D.Pa. 1980). Common among all of these cases is an examination of the policy objectives underlying *Illinois Brick* and an ultimate conclusion that, by permitting a plaintiff to maintain a suit against an otherwise indirect party who has been conspiring with an intermediate, those concerns would not be thwarted. When the reasons for applying a rule fail to apply, application of the rule becomes inappropriate.

In *Illinois Brick*, the Supreme Court articulated at least two major policy reasons for denying the plaintiff's recovery. First, the Court reasoned that if indirect purchasers were permitted to sue for overcharges passed on to them from indirect sellers, a substantial risk of duplicative recovery would be created. *See Illinois Brick*, 431 U.S. at 737. Under *Hanover Shoe*, a seller may not raise a passing-on defense in a suit brought by intermediates, thus the intermediates may recover from the sellers the whole of the proven overcharge. If the indirect purchasers were also permitted to recover damages for the passed-on overcharges, multiple recovery would occur. The seller would be fully liable to both the intermediates and the indirect purchasers. *Illinois Brick* seeks to avoid the unfairness of this result.

The risk of multiple liability is virtually eliminated, however, where the seller and intermediate are alleged to be co-conspirators. Under such circumstances, the seller and the intermediate are considered equal participants in the conspiracy, thus the intermediate may no longer recover in a suit against the seller. Because the seller and intermediate are equal, the "indirect" purchaser's injury likewise becomes "direct." This is so, because the harm suffered by the purchaser is directly caused by the co-conspirators, not passed indirectly through some distributional chain. Central to the concept is the assertion that the intermediates are engaging in knowing, illegal acts in concert with the manufacturers which gives rise to their status as co-wrongdoers. The situation in which an otherwise innocent party merely "passes on" the charges of its manufacturer inflated by the illegal price fixing conduct engaged in by those manufacturer sellers, is distinguishable factually and in terms of its legal effect from the plaintiffs' instant allegations.

The second policy notion with which *Illinois Brick* was concerned involved the complexities of tracing damages passed-on throughout the various stages of the chain of distribution. *Id.* The existence of the tracing issue derives from the difficulties encountered in attributing price increases, or

any portion thereof, directly to the illegal overcharge as opposed to other forces which may affect the market (e.g., supply and demand). *Mid-Atlantic Toyota*, 516 F.Supp. at 1292-93. Thus, the concern in *Illinois Brick* focused upon the complexities of evaluating the injury which indirect purchasers sustain by illegal overcharges passed on through the distributional chain.

The tracing concern, like the risk of multiple liability, is greatly diminished amidst allegations of a conspiracy between the seller and the intermediate. This is so, because with the existence of a conspiracy to fix prices, market forces are superseded. The prices paid by the indirect purchasers are almost by definition not determined by the influence of supply and demand. Without the interference of such market forces, the complexity of the damages calculation drops markedly.

Having articulated the policies underlying *Illinois Brick* and their general inapplicability to cases involving allegations of conspiracy, we turn now to the applicability of *Illinois Brick* to cases such as that presented here, where charges of vertical conspiracy have been alleged. The plaintiffs allege that the Manufacturer Defendants, together with the Wholesaler Defendants, entered into a price-fixing conspiracy whereby they "acted jointly and in concert to fix, raise, maintain and stabilize the prices which they charged retail pharmacies for Prescription Brand Name Drugs." Consolidated and Amended Class Action Complaint at ¶ 80(a). Taking, as we must, the plaintiffs' allegations as true, the question becomes whether *Illinois Brick* precludes the plaintiffs from bringing suit against the Manufacturer Defendants. We conclude that, for many of the reasons stated above, the policy concerns which guided the Court in *Illinois Brick* fail to pose significant problems in the allegations presented here. Unlike the plaintiffs in *Illinois Brick*, the plaintiffs here are not alleging that the illegal overcharges were passed on to them through the chain of distribution. Rather, the plaintiffs are alleging a massive conspiracy in which all of the defendants,

wholesalers and manufacturers, were participants. We do not believe that *Illinois Brick* pertains to the factual circumstances as alleged by the plaintiffs. As such, we find that *Illinois Brick* does not apply.

The court recognizes that at least two circuits have expressly rejected the vertical conspiracy theory. *See Link v. Mercedes-Benz of North America, Inc.*, 788 F.2d 918, 931 (3d Cir. 1986); *In re Midwest Milk Monopolization Litigation*, 730 F.2d 528, 531 (8th Cir. 1984). In each of these cases, the plaintiffs' allegations of vertical conspiracy succumbed to *Illinois Brick* because the plaintiffs had failed to join all of the intermediate co-conspirators, thereby increasing the risk of multiple liability. We refrain, however, from granting the Manufacturer Defendants' motion on these grounds. In the present case, the plaintiffs have named a large percentage of all possible Wholesaler Defendants. In light of that, we do not believe the plaintiffs should be so severely penalized for the failure to join every single Wholesaler Defendant. We conclude that *Illinois Brick* does not apply to the situation as alleged by the plaintiffs. As such, the Manufacturer Defendants' motion is denied.

II. Burroughs Wellcome's Motion for Summary Judgment

Defendant Burroughs Wellcome, Co. ("Burroughs Wellcome") moves for Summary Judgment in its favor on certain individual plaintiffs' Sherman Act claims for treble damages under § 4 of the Clayton Act, 15 U.S.C. § 15. Similar to the Manufacturer Defendants, Burroughs Wellcome asserts that because the plaintiffs in the various individual actions, with the exception of Plaintiff Albertson's Inc., have not purchased brand-name prescription drugs directly from Burroughs Wellcome, *Illinois Brick* bars the plaintiffs' claims as to Burroughs Wellcome. For the reasons stated above in the Manufacturer Defendants' portion of this opinion, we disagree. We conclude that where its policy concerns would not be significantly advanced, *Illinois Brick* has no application to

cases involving allegations of vertical conspiracy. The defendant's motion is therefore denied.

CONCLUSION

For the reasons stated above, each of the Defendants' motions is denied.

/s/ CHARLES P. KOCORAS
Charles P. Kocoras
United States District Judge

Dated: October 18, 1994

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

Nos. 94 C 897, MDL 997

Charles P. Kocoras, *Judge*.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS.

Nos. 96-2458, 96-2485
96-2814, 97-2156

IN RE: BRAND NAME PRESCRIPTION DRUGS
ANTITRUST LITIGATION

October 8, 1997

Before
Hon. RICHARD A. POSNER, *Chief Judge*
Hon. WILLIAM J. BAUER, *Circuit Judge*
Hon. DIANE P. WOOD, *Circuit Judge*

ORDER

Petitions for rehearing with suggestions for rehearing *en banc* have been filed by Amerisource Corporation, DuPont Merck Pharmaceutical Company, Ciba-Geigy Corporation, and American Home Products Corporation. All the judges on the original panel have voted to deny the petitions, and none of the active judges has requested a vote on the suggestions for rehearing *en banc*. The petitions for rehearing are therefore DENIED.

Hon. Walter J. Cummings, Hon. Kenneth F. Ripple and Hon. Daniel A. Manion did not participate in the consideration of the petitions.

UNITED STATES CODE ANNOTATED
TITLE 15. COMMERCE AND TRADE
CHAPTER I. MONOPOLIES AND COMBINATIONS IN RESTRAINT OF TRADE

§ 1. Trusts, etc., in restraint of trade illegal; penalty

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding $10,000,000 if a corporation, or, if any other person, $350,000, or by imprisonment not exceeding three years, or by both said punishments, in the discretion of the court.

PARTIES TO THE PROCEEDING

Over 100 actions by retail pharmacies have been transferred by the Judicial Panel for Multidistrict Litigation to the United States District Court for the Northern District of Illinois for coordinated or consolidated proceedings as *In re: Brand Name Prescription Drugs Antitrust Litigation* (MDL 997). The district court certified a nationwide class of retail pharmacy plaintiffs, which alleges price-fixing by the manufacturers and wholesalers of brand name prescription drugs in violation of section 1 of the Sherman Act, 15 U.S.C. § 1. Other independent pharmacies and chains chose to opt out of the class, and are pursuing Sherman Act and other claims (the "opt out actions").

The manufacturer and wholesaler defendants named as defendants in the class action complaint are Abbott Laboratories, American Cyanamid Company, American Home Products Corporation, Bristol-Myers Squibb Company, Burroughs Wellcome Company, Ciba-Geigy Corporation, DuPont Merck Pharmaceuticals Company, Eli Lilly and Company, Forest Laboratories, Inc., G.D. Searle & Company, Glaxo, Inc., Knoll Pharmaceuticals Company, Marion Merrell Dow Inc., Merck & Company, Inc., Johnson & Johnson, Pfizer, Inc., The Purdue-Frederick Company, Rhone-Poulenc Rorer Pharmaceuticals, Inc., Sandoz Pharmaceuticals Corporation, Schering-Plough Corporation, SmithKline Beecham Corporation, The Upjohn Company, Warner-Lambert Company, Zeneca, Inc., AmeriSource Corporation, Bergen Brunswig Corporation, Bindley-Western Corporation, Cardinal Distribution, Inc., FoxMeyer Drug Company, McKesson Corporation and Whitmire Distribution Corporation. These defendants (except DuPont Merck Pharmaceuticals Company) are also defendants in certain of the opt out actions. Although not defendants in the class action, Boehringer Ingelheim Pharmaceuticals Corporation and Hoffman-LaRoche, Inc. are defendants in certain opt out actions.

Sandoz Pharmaceuticals Corporation has merged with the pharmaceutical business and assets of Ciba-Geigy Corporation to become Novartis Pharmaceuticals Corporation. Burroughs-Wellcome Company and Glaxo, Inc. have merged to become Glaxo Wellcome, Inc. Marion Merrell Dow Inc. is now known as Hoechst Marion Roussel, Inc. The Upjohn Company is now known as Pharmacia & Upjohn Company.

Certain manufacturer defendants have entered into settlement agreements with certain plaintiffs and been dismissed from certain actions. Each manufacturer and wholesaler defendant is currently a defendant in at least one action pending at the district court.

The named plaintiffs in the federal class action, *HJB, Inc., et al v. Abbott Laboratories, et al.*, No. 93 CV 6728, et al, are:

HJB, Inc.
Endlers Pharmacy Inc.
Barry's Cut Rate Stores, Inc.
Central Drug Distributors Inc.
Brady's Pharmacy Inc.
Brady Enterprises Inc.
Conney's Pharmacy Inc.
Solomon Cooper Drugs Inc.
Meyer's Pharmacy Inc.
Blackburn's Physicians Pharmacy, Inc.
Mark Drug-Strathmore
Lakeside Schwettman Pharmacy
Bethayres Pharmacy Inc.
Pat-Y-Ken Drug, Inc
Starko, Inc.
El-J, Inc.
Independent Pharmacy Cooperative Inc.
Village Pharmacy In Shire's Shopping Center, Inc.
Lurie Pharmacy Inc.
Melrose Pharmacy, Inc.
Mandel Enterprises, Inc.
LaPorte Products Co.
Guardian Health Care, Inc.

J&M Pharmacy, Inc.
Thrifty Cut-Rate Drug of Seaford, Inc.
Joseph Chang
McHugh Pharmacy Wynnwood, Inc. t/a/ Tepper Pharmacy
Jean Ann Silverness d/b/a Marttila Drug
Medirex, Inc. d/b/a Reid Sav-On Corp.
Bacon Normandi Corp. d/b/a Lawson-Dyer Pharmacy
James Pharmacy Inc.
The plaintiffs in the individual actions are:

The Bartell Drug Company
Brooks Drug, Inc.
Danielson Medical Arts Pharmacy, Inc.
Hart Drug, Inc., d/b/a Hart Snyder Drug
Hook-SuperRx, Inc.
Hunt Silver Lake Drug, Inc.
Lake City Drug, Inc.
Oftedahl Drug, Inc.
Pathmark Stores, Inc.
Perry Drug Stores, Inc.
Revco D.S., Inc.
Rite Aid Corporation
Rx USA, Inc.
Setzer Pharmacy, Inc.
Smith's Food & Drug Centers
SMFS, Inc.
Snyder's Drug Stores, Inc.
Thrifty Drug Stores, Inc.
Weis Markets, Inc.
Albertson's
The Kroger Co.
Safeway Inc.
The Vons Companies, Inc.
The Stop & Shop Supermarkets Co.
Homeland Stores, Inc.
Fred Meyer, Inc.
Hy-Vee Food Stores, Inc.

The Great Atlantic & Pacific Tea Co.
Giant Food, Inc.
Fullerton Drug Co.
Chicago Drug Co.
Ltd. Pharmacy, Inc.
Kadel Drug, Inc.
Berdel, Inc.
Foster Western Pharmacy, Inc.
Weiss Pharmacy, Inc.
Malley's Pharmacy, Inc.
Prescription Mart Pharmacy, Inc.
Lovoi & Sons Pharmacy, Inc.
Cambridge Pharmacy, Inc.
Bill Thames Pharmacy, Inc.
Higginbotham Drug, Inc.
Harrington's Pharmacy, Inc.
Liberty Pharmacy, Inc.
Alto Pharmacy, Inc.
Stat Care Pharmacy, Inc.
Billy Franks, Inc.
Howard's Super Sav Pharmacy, Inc.
Kinard's Pharmacy Store, Inc.
Lucas U-Sav Pharmacy, Inc.
Family Pharmacy Partnership
Vidor Family Pharmacy Partnership
H. Fred King d/b/a King's Pharmacy
Steve Stevenson d/b/a S&R Pharmacy
West Orange Pharmacy, Inc.
L&J Pharmacy, Inc.
Lakeview Pharmacy, Inc.
Alford's Pharmacy
Jarrott's Pharmacy, Inc.
Fannett Pharmacy
Hashop Pharmacies, Inc.
McMakin Pharmacy, Inc.
Kenneth H. Sheffield d/b/a Nederland Pharmacy
Hashop Pharmacies, Inc. d/b/a Gibson Discount Pharmacy
Brookshire Brothers, Inc.

King David, Inc.
Pat Wood Drug Stores, Inc.
B.T. Enterprises, Inc.
M&E Food Mart, Inc.
Lea Johansson d/b/a Harrington's Pharmacy
Nick's Discount Pharmacy, Inc.
John A. Dennsion, Jr. d/b/a Orange Pharmacy
Brookshire Brothers Pharmacy of Kirbyville
Ben Ralph Shipman d/b/a Gee Shipman Pharmacy
Henry O. Ager III & Sons, Inc.
Katy Rx, Inc.
MAKM, Inc.
Uyen Le d/b/a Canin Pharmacy
Bobby W. Reeves d/b/a Reeves Pharmacy
EKM, Inc.
Hervey & Bethard, Inc.
Kenneth Blaschke d/b/a Ken's Rexall Kiowa Pharmacy
McCroskey Teh Columbus Pharmacy
McCroskey Inc. & RJW, Inc.
Scriptowne No. 1-Pearsall
Avondale Pharmacy, Inc.
Ben Carnes d/b/a Rippetoe Pharmacy
Borger Pharmacy, Inc.
Corando R. Trevino d/b/a Modern Pharmacy
Ellis Pharmacy, Inc.
Myers Drug & Home Health Equipment
Pro-Script Pharmacy Services, Inc.
Terrell Drug Stores, Inc.
The Laroque Company, Inc.
Paul D. Stringer d/b/a Paul's Fee Pharmacy
Pay-and-Save, Inc.
R. Duane Epperson d/b/a Village Pharmacy
Tim Worsham d/b/a The Medicine Shoppe
Blue Front Drug, Inc.
Ciolino Pharmacy, Inc.
Fortenberry & East, Inc.
James J. Brothers d/b/a Brothers Pharmacy
Jeffrey Markovitz d/b/a Dierken's Pharmacy

M&M Pharmacies, Inc.
Nasif Enterprises d/b/a Budget Saver Pharmacy
Oliver Drug Store, Inc.
Paul E. Reed d/b/a The Medicine Shoppe No. 1044
Shaman, Inc.
The Drug Basket, Inc.
Wilcox Pharmacy, Inc.
Senatobia City Drug, Inc.
Chuck Snyder's Pharmacy, Inc.
Ideal Drug Store, Inc.
Northern Hills Pharmacy, Inc.
Richard Todd d/b/a Todd Pharmacy
Carl Furqueron d/b/a Ray Pharmacy
Clifton H. Hurt, Jr. d/b/a Wright-Dyer Drug
Tommy H. Strong d/b/a Strong Pharmacy
Smitty's Super Valu, Inc.
Appletree Markets, Inc.
Eagle Lake Drug Store, Inc.
Nall's Family Pharmacy, Inc.
Pharmacy Plus Script Shops, Inc.
Pharmacy Plus, Inc.
Moore's Pharmacy, Inc.
Satterwhite & Sons, Inc. d/b/a Brookshire Brothers #18
Bruce & Human Drug Co.
Hartig Drug Stores Corporation
Raley's, Inc.
Wagner Drugs, Inc.
Harco Drug, Inc.
Publix Supermarkets
Pharmhouse Corp.
Gollash Pharmacies, Inc.
Meier, Inc.
F&M Distributors, Inc.
CHEMD, Inc. d/b/a Texas Drug Warehouse
Big B, Inc.
Lawrence Adams d/b/a McSpadden Drug Store
Boyce Arnett d/b/a Medical Center Pharmacy

City Pharmacy of Little Rock, LLC
Rosedale Pharmacy, Inc.
Park West Pharmacy, Inc.
Wynne Apothecary, Inc.
Medic Pharmacy No. 1, Inc.
Bryant's Investments & Holdings, Inc., d/b/a Bryant Pharmacy & Healthcare Center
Caldwell Pharmacy, Inc., d/b/a Wynne Medical Pharmacy
Cate Pharmacy
Pat's Super V Drug Store, Inc.
Kavanaugh Pharmacy, Inc.
Arch Street Pharmacy, Inc.
James Crone d/b/a James Crone Pharmacy and Orthopedics
Medi Save Drugs, Inc.
Darling Pharmacy, Inc.
Plaza Pharmacy, Inc.
Finnegan's Inc.
Geyer Springs Pharmacy, Inc.
Model Pharmacy, Inc. d/b/a Model Rexall Pharmacy
American Drugs, Inc.
American Food & Drugs, Inc.
Greenbrier Village Drugs, Inc. d/b/a American Drugs
Family Medical Center Pharmacy, Inc.
Sardis Road Drug, Inc. d/b/a Shannon Hills Pharmacy
Baker Drug Store, Inc.
Rector Downtown Drug, Inc.
Robert Hodge d/b/a Prescription Corner Drug
Larry Holcomb d/b/a Piggott Discount Drug
Econo-Mart Pharmacy, Inc.
Delta Drug, Inc.
Ash Flat Pharmacy, Inc.
Johnson Pharmacy, Inc.
The Pharmacy, Inc.
Lee's Pharmacy, Inc.
Monette Discount Drug, Inc.
Dwight Mann d/b/a Otter Creek Pharmacy
Tedford Drug Co., Inc.

Lornail McClure d/b/a McClure's Pharmacy
Charles Miller d/b/a Miller's Pharmacy
Oak Grove Pharmacy, Inc.
Harold L. Norman and Charles F. Baker, P.A.
Hazel Lyons d/b/a Lyon's Drug Store
Economy Drug, Inc. d/b/a Medicine Man Pharmacy
Roger Price d/b/a College Pharmacy
Ragland Bros., Inc., d/b/a Prescription Shop
City Drug of Jonesboro, Inc, d/b/a City Drug
Discount Pharmacy, Inc.
East End Pharmacy, Inc.
Robertson Pharmacy, Inc.
Rothrock Drug Company, Inc.
Smith's Country Club Drug Store, Inc.
Seal's Pharmacy, Inc.
The Nyal Drug, Inc.
Hyde Pharmacy, Inc.
Marcus Speer d/b/a Mark's Pharmacy
Strecker's Drug, Inc.
Christine Swigal d/b/a Harrisburg Drug Store
William Thomas d/b/a The Pill Box
Market Place Pharmacy, Inc.
Ken's Sav-On
Stotts Drug Company, Inc.
George Wimberly d/b/a Buice Drug Store
Economy Drugs, Inc.
White Hall Pharmacy
Harris Drug Store, Inc.
Bell Pharmacy, Inc.
Price Chopper Pharmacy
Hampton Medical Pharmacy
Edward Buerkle d/b/a Buerkle Drug Co.
Kirby Drug Store, Inc.
Dawn Clontz d/b/a Dale's Pharmacy
Coker-Hampton Drug Co., Inc.
Collier Rexall Drug Stores, Inc. d/b/a Collier's Dixon Street and Collier's North

Collins Family Pharmacy, Inc.
Cooper Drug, Inc.
Jerry Crouse d/b/a Lake Village Drug Store
The Prescription Store of Fordyce, Inc.
Rose Drug
Delta Drug, Inc.
Hillbillies Pharmacy, Inc d/b/a Bill's Pharmacy
Eureka Drug Company
North Park Pharmacy, Inc.
Lloyd Haney d/b/a Elmo Haney's Pharmacy
Medic Pharmacy of El Dorado
W.P. Malone, Inc. d/b/a Allcare Pharmacy and Douglas Medical Pharmacy and Medic Mart Pharmacy
Rex Drug, Inc.; Holiman, Inc.
Midland Drug, Inc.
Hudson Pharmacy, Inc.
James Kelley d/b/a Kelley Drug and Selections
Sunnymede Pharmacy, Inc. d/b/a Lee's Pharmacy
Family Pharmacy, Inc.
Manes' Pharmacy, Inc. d/b/a Super Sav Drug No. 3
City Drug of Monticello, Inc. d/b/a/ City Health Mart
Perry Rexall Drug, Inc.
Miller's Pharmacy, Inc.
Travis Mitchell d/b/a Mitchell Medimart
Jimmy Newsom d/b/a Newson's Family Pharmacy
Newton's Pharmacy, Inc.
Garden Oaks Pharmacy, Inc.
College Hill Drug, Inc.
Woodard Drug, Inc.
Powell Drug Company, Inc.
Jimmy Power d/b/a Power Pharmacy
City Pharmacy of Rison, Inc.
Meador Pharmacy
Charles Roland, Sr., d/b/a Roland Drug Store
Reed's Drug Store, Inc.
City Rexall Drug, Inc.
Murray-Hart Drug, Inc.

J.D. Stone, Inc. d/b/a A.G. Crawford Pharmacy
Chastco, Inc. d/b/a City Drug Store
Ron Teasley d/b/a Teasley Drug
Floyd Tye d/b/a Wilson Bearden Pharmacy
Portland Drug, Inc.; C&D Drug Store, Inc.
Family Health Mart Pharmacy, Inc.
Charles LaGrone d/b/a LaGrone Drug
Bobby Teeter's Drug Store, Inc.
Eugenia W. Raper d/b/a The Corner Pharmacy
W.F. Slaughter d/b/a City Drug Store
Vilonia Drug, Inc.
Royce Wilson d/b/a Wilson Wil-Sav Pharmacy
Thomerson Drugs, Inc. d/b/a Thomerson Drug Store
Don's Drug, Inc.
Donald Baggett d/b/a Don's Drug
Thrifty Drug, Inc.
Bailey's West Side Pharmacy, Inc.
Hattabaugh's Pharmacy, Inc. d/b/a Super Sav Drugs No. 2
Plummer's Drug, Inc.
D.L. Baker Drug Co., Inc. d/b/a Baker Valu Rite and Baker Rexall Drugs
Phil's Pharmacy, Inc.
Stone's Pharmacy, Inc.
MaGee Pharmacy, Inc.
A.B. Morris dba Brown Morris Pharmacy
A. Tharyn Nachtigall, R.Ph. dba Collinsville Family Pharmacy
Albert Shlamowitz dba Budget Drug
Albin L. Kaiser dba Nevada Street Pharmacy
Alicia J. Smith, R.Ph. dba Doctors Park Pharmacy
Allen Drug Co. dba Allen Drug
Allen E. Kayler dba J & S Drug
Altgeld Garden Drug Co dba Altgeld Garden Drug Co
Alvin Woody dba Troutman Drug Store
Amboy Pharmacy dba Amboy Pharmacy
Anderson Drugs dba Anderson Drugs
Anderson's Thrif-T Drugs dba Thrif-T Drugs

Anderson's Thrif-T Drugs dba Thrif-T Drugs
Andrew J. Doherty dba Woodfin's Pharmacy
Andrew P. Naglak dba Medicine Shoppe
Anthony B. Meadows dba Drug Shoppe
Anthony G. Caserta Ltd. dba Alleon Pharmacy
Anward J. Mayeaux dba Mayeaux's Family Pharmacy
Anzalone, Mary Anne dba Fino's Pharmacy
Archie Chauvin dba Lydia Pharmacy
Arcola Pharmacy dba Arcola Pharmacy
Arthur G. Jacob dba Art Jacob Prescription Shoppe
Arthur W. Cipriany dba Lehman's Pharmacy
Arwood-Brown Medical Center Pharmacy dba Medical Center Pharmacy
Assam Drug Company dba Assam Drug Company
Athens Pharmacy dba Athens Pharmacy
Atkinson's Hospital Pharmacy dba Atkinson's Hospital Pharmacy
Atkinson's Orange Park Pharmacy dba Atkinson's Orange Park Pharmacy
Avenel Pharmacy dba Avenel Pharmacy
Avery Moore, Jr., dba Moore Drug Store
Avondale Pharmacy dba Avondale Pharmacy
B & H Medical dba B & H Pharmacy
B. J. Massey dba Massey's Pharmacy
B.K. Reynolds dba Bainbridge Pharmacy
Baggett Pharmacy Partnership dba Baggett Pharmacy
Bailey Pharmacy dba Bailey Pharmacy
Baker's Pharmacy dba Baker's Pharmacy
Bakula, Michael J. dba Failor Pharmacy
Bandy Drugs dba Bandy Drugs
Barlen Pharmacy dba Arrow Drugs
Barnes Drug Store dba Barnes Drug Store
Barnes Drug Store dba Barnes Drug Store
Barnes Drug Store dba Barnes Drug Store
Barnes Drug Store dba Barnes Drug Store
Barney Summerlin, R.Ph. dba The Medicine Shoppe of Bennettsville

Bartlett Prescription Shop dba Bartlett Prescription Shop
Bateman Pharmacy dba Bateman Pharmacy
Bates Cash Pharmacy dba Bates Cash Pharmacy
Bath Pharmacy dba Bath Pharmacy
Bay Pharmacy dba Bay Pharmacy
Beach Haven Pharmacy dba Kaplers Pharmacy
Beaverton Prescription Shoppe dba Prescription Shoppe
Beelers Drug Store dba Beelers Drug Store
Ben C. Tsutsumoto dba State Drug
Benham's Discount Pharmacy dba Benham's Discount Pharmacy
Benham's Discount Pharmacy dba Benham's Discount Pharmacy
Benjamin Keith Dupree, Sr. dba Dupree Drugs
Bennett's Pharmacy dba Bennett's Pharmacy
Berdinka, Stanley C. dba Family Pharmacy of Auburn
Bernard W. Schutt dba Glade Hill Pharmacy
Bi-Wise Pharmacy dba Bi-Wise Pharmacy
Bill Bond Pharmacies, P.A. dba Bill Bond Prescriptions
Bill C. Hamilton dba Bi-Rite Pharmacy
Bill J. Wheeler dba Wheeler's Valley Pharmacy
Bill Waltz dba Waltz Pharmacy
Billy Joe Holt dba Holt Family Pharmacy
Bird's Pharmacy dba Bird's Pharmacy
Bitting's Apothecary dba Bitting's Pharmacy
Bitting's Apothecary dba Bitting's Pharmacy West
Blake A. Rice dba Riddle Pharmacy
Blake Vidrine dba Blake's Family Pharmacy
Blake's Southside Pharmacy dba Blake's Southside Pharmacy
Blount Discount Pharmacy dba Blount Discount Pharmacy
Bob E. Snipes dba Richland Pharmacy
Bob's Apothecary dba Bob's Apothecary
Bob's Drug Company dba Bob's Drug Company
Bobby B. Howell and Charmayne K. Howell dba Kilmichael Drugstore
Bobby Parham dba Medical Arts Pharmacy

Bowen's Pharmacy dba Bowen's Pharmacy
Boyd's Pharmacy of Bordentown dba Boyd's Pharmacy
Boyd's Pharmacy of Florence dba Boyd's Pharmacy
Boyd's Pharmacy of Mansfield dba Boyd's Pharmacy
Boyd's Pharmacy of Pemberton dba Boyd's Pharmacy
Boyd's Pharmacy of Ringoes dba Boyd's Pharmacy
Bradley Drug Co. #2 dba Bradley Drugs #1
Bradley Drug Co. #2 dba Bradley Drugs #2
Brandall Lovvorn dba Lovvorn Pharmacy
Breaux's Drugs dba Breaux's Drugs
Brent's Drugs dba Brent Drugs
Brewton Medical Center Pharmacy, P.C. dba Medical Center Pharmacy
Brian T. Ortego dba Ortego's Advalue Drug Center
Brine Pharmacy dba Brine Pharmacy
Brockman's Pharmacy dba Brockman's Pharmacy
Brookshire Pharmacy dba B & B Pharmacy
Brossart Pharmacy dba Brossart Pharmacy
Brown Discount Drugs dba Brown Discount Drugs
Bruce C. Nelson dba Woodrow's Pharmacy
Bruce Sigman dba Weldon Pharmacy
Bruce Soileau dba New Parrino Drugs
Burke Drugs dba Chestnut Aid Pharmacy
Busbee's Pharmac dba Medicap Pharmacy
Butler Pharmacy dba Butler Pharmacy
Buy for Less Discount Pharmacy dba Buy for Less Pharmacy
Buy for Less II Pharmacy dba Buy for Less II Pharmacy
Byrd-Watson South Ninth Street Drug Company dba Byrd-Watson Drug
Byrd-Watson Times Square Drug Company dba Byrd-Watson Drug
Byrd-Watson-Reuter dba Byrd-Watson-Reuter
Byrne Pharmacy dba Byrne Pharmacy
Byron A. Berry Jr. dba Pharmacy Plus
C. Blair Tidmarsh, R.Ph dba Mauldin Family Pharmacy
C. Dennis Laman dba College Hill Pharmacy

C. Don Rice dba Nocona Pharmacy
C. Don Rice, R.Ph dba Central Healthmart Pharmacy a/k/a Central Pharmacy
C. Wayne Bullard, R.Ph dba Bullard Drug Store
Caffey's Pharmacy dba Caffey's Rexall Pharmacy
Caldwell, Louis E. dba Tacoma Medical Center Pharmacy
Campbell's Drug dba Campbell's Drug
Campton Discount Drugs dba Campton Discount Drugs
Canan's Pharmacy dba Canan's Pharmacy
Carey L. Sherman, R.Ph dba Sooner Pharmacy a/k/a Sooner Discount Pharmacy
Carl A. Dean dba Perkel Pharmacy
Carl S. Viola dba Lincoln Drugs & Plaza Pharmacy
Carlos G. Martinez dba Warnack Pharmacy
Carlos R. Newcomb, R.Ph dba S & D Drug
Carmichael Cashway Pharmacy dba Cashway Pharmacy
Carrington Drug dba Carrington Drug
Carter Clements dba Rhine Drug Co.
Cary Freeman, R.Ph. dba Powdersville Pharmacy, P.A.
Cashway Pharmacy of Erath, LA dba Cashway Pharmacy of Erath
Casper Payless Drug Company dba Bi-Rite Health Mart
Catawba Pharmacy dba Medicap Pharmacy
Cato's Rx Pharmacy dba Cato's Rx Pharmacy
Central Pharmacy dba Central Pharmacy
Central Pharmacy dba Central Pharmacy
CGS Drugs dba Regal Pharmacy
Chapman Pharmacy dba Chapman Pharmacy
Charles A. Moore dba City Pharmacy
Charles D. Ledford, R.Ph dba Triangle Drug Store
Charles G. Bennett, Jr. dba Bennett's Pharmacy
Charles H. Gerlach Drug dba Chuck Gerlach Drug
Charles Posey dba Medical Park Pharmacy
Charlevoix Commons Apothecary, Ltd dba Charlevoix Commons Apothecary
Charlevoix Commons Apothecary, Ltd dba Central Drug Store

Charlie's Pharmacy dba Charlie's Pharmacy
Charlie's Pharmacy Store No. 2 dba Charlie's Pharmacy Store No. 2
Charlines's Drugs of Bloomfield dba Terry Drugs
Cherry Hill Pharmacy dba Cherry Hill Pharmacy
Chester Young dba Silvertown Pharmacy
Chris Miller, R.Ph dba Hackney Drug
Christian's Pharmacy dba Christian's Pharmacy
Christopher M. Hanna dba Hanna's Discount Pharmacy
Christopher Vorrath dba Managed Health Care of Oregon I
Church Point Pharmacy dba Church Point Pharmacy
City Drug Store of Manistee dba City Drug Store
Clarence J. Martin dba Martin's Pharmacy
Clark Medical Center Pharmacy dba Clark Medical Center Pharmacy
Clarke's Drugs dba Clarke's Drugs
Clemens, Wayne L. dba The Medicine Shoppe
Clendenin Pharmacy dba Clendenin Pharmacy
Cleveland W. Brown dba Corner Drugs
Clinic Pharmacy dba Clinic Pharmacy
Clinton J. Voelkel dba Voelkel's Pharmacy
Clyde O. Rigby dba Challis Drug Company
Coleman, William R. dba Red Cross Drug Store
College Pharmacy dba College Pharmacy-Plaza East
Collinwood Drugs dba Collinwood Drugs
Colonial Pharmacy dba Colonial Pharmacy
Columbia Drug Co. dba Columbia Drug Co.
Comfort Drug dba Comfort Drug
Commonwealth Pharmacy-Piney Forest dba Commonwealth Pharmacy-Piney Forest
Community Pharmacy of South Boston dba Community Pharmacy of South Boston
Continental Pharmacy, P.A. dba Continental Pharmacy, P.A.
Cook Pharmacy dba Cook Pharmacy
Cook's Pharmacy dba Cook's Pharmacy
Cook's Pharmacy of Shavertown dba Cook's Pharmacy of Shavertown

Cornell, Gary R. dba Cornell's Valley Pharmacy
Corner Drug Store dba Corner Drug Store
Corner Drug Store-dba Corner Drug Store
Corner Drug Store/Drug World dba Corner Drug Store/Drug World
Corner Pharmacy dba Corner Pharmacy
Cosgraves Northvale Pharmacy dba Northvale Pharmacy
Cottage Pharmacy dba Cottage Pharmacy
Country Casuals Pharmacy dba County Casuals Pharmacy
Crawford Value Drug dba Crawford Value Drug
Crestview Pharmacy dba Crestview Pharmacy
Crow Drug Store dba Crow Drug Store
Culver Pharmacy dba Culver Pharmacy
Cy's Elma Pharmacy dba Cy's Elma Pharmacy
Dan David Bennett dba Elgin Main Street Pharmacy
Dan Wiggins dba Eastside Pharmacy
Daniel C. Royal dba Royal Pharmacy
Daniel Joseph Maher dba Country Drug
Daniel T. Wagner dba Medi Pharmacy
Darwin Morris dba Kay's Pharmacy
Dauner Pharmacies, CHTD dba Manka to Professional Pharmacy
Dav Lyn Pharmacy dba Hanh Pharmacy
Dave's Drug A Partnership dba Dave's Drug
David Bruder and Ronald Lewullis dba Bath Drug
David E. Nicklas, R.Ph dba Harrison Discount Pharmacy
David G. Martin dba Sherwood Hall Pharmacy
David J. Austin dba Kirklyn Pharmacy
David Leach dba Penn Laurel Pharmacy
David M. Hockhalter dba Dave's Pharmacy
David Ofstedahl dba Fireside Pharmacy
David R. Wichman dba Dave's Prescription Shop
David Stnacil dba Stancil Pharmacy
David W. Garber dba Fishburne Pharmacy
Davidson, Richard dba Evergreen Drug Center
Day's Miami Heights Pharmacy dba Day's Miami Heights Pharmacy
Dean B. Youngmans, R.Ph dba Laurens Drug Company

Delprete Pharmacy, Ltd dba Delprete Pharmacy, Ltd
Denmon's Louisiana Pharmacy dba Denmon's Louisiana Pharmacy
Dennis A. Camp, R.Ph. dba Camp Pharmacy
Dennis E. Williams, R.Ph. dba Lexington Pharmacy
Dennis Helbert dba Live Oak Pharmacy
Dennis W. Thompson, R.Ph dba Perry Pharmacy
Dennis Wollman dba Wollman Pharmacy
Dennis Wollman dba Wollman Pharmacy
Diamond Drug Co. dba Diamond Drug Co.
Diket's Professional Pharmacy dba Diket's Professional Pharmacy
Discount Drugs of Union City dba Discount Drugs of Union City
Dodge County Med. Cntr. Prescription Drugs dba Medical Center Prescription Shop
Don A. Ray, R.Ph. dba The Medicine Shoppe of Newberry
Don Englerth dba Gilbert Drugs
Don Goins dba Don's Healthmart Drug
Don L. Middleton, Ph.d dba Middleton's Drug
Don M. Apple dba Thrifty Pharmacy
Don M. Johnson dba Sav-A-Lot Pharmacy
Don Minix dba Medical Center Pharmacy
Don Wall, R.Ph dba Kash and Karry Pharmacy
Donald J. Smith dba Coats Pharmacy
Donnie Whitaker dba Whitaker's Pharmacy
Donohue, Michael J. dba Bob Johnson's Pharmacy
Douden's on the Green dba Douden's on the Green
Douglas C. Weise dba Prescription Laboratory of Spring Branch
Dow Enterprises, Ltd dba Byron's Pharmacy
Downing, Donald F. dba Capitol Square Pharmacy
Dredsen Discount Drugs dba Dredsen Discount Drugs
Driscoll, Tim dba Tekoa Pharmacy
Drug Care of Currituck, NC dba Drug Care Discount Pharmacy
Drug Center Pharmacy #3 dba Drug Center Pharmacy

Drug Pro-Inc dba Wattles Park Drug-Pro
Duncan's Pharmacy dba Duncan's Pharmacy
Duncan-Prescription Center dba Duncan-Prescription Center
Duskin, Dale C. dba Arlington Pharmacy
Duskin, Dale C. dba Cumulus Park Pharmacy
Duskin, Dale C. dba Quilceda Pharmacy
E. H. Etheridge dba Candler Street Drugs
E. R. Glasgow dba Thrift-Town Pharmacy
Eastside Pharmacy Services dba Eastside United Drug #9
Economart Discount Drug Center dba Economart Discount Drug Center #1
Economart Discount Drug Center dba Economart Discount Drug Center #2
Economart Discount Drug Center dba Economart Discount Drug Center #3
Economy Discount Drugs dba Interbay Discount Drugs
Economy Drug dba Economy Drug
Edward M. Kramer, R.Ph dba Henry's Conaway Drug Store
Elam Stokes dba Stokes Rx Center
Elizabeth C. Cannon dba Abbeville Pharmacy
Emmett F. Baxter dba Baxter's Drug Store
English Drug Co. dba English Drug Co.
Eppy Drugs dba Metropolitan Pharmacy
Erwin Pharmacy dba Erwin Pharmacy
Eugene D. Rivard, Partners, et al. dba Berlin Drug Co.
Evans Drug Co. dba Evans Drug Center
F & D Pharmacy dba Medical Arts Chemists
F & M Drug, Co. dba F & M Drug, Co.
Faiz Oley, Sole Proprietor dba Westbury Pharmacy
Family Drug dba Family Drug
Family Drugstore of New Iberia dba Family Drugstore of New Iberia
Family Medical Discount Pharmacy dba Orange Beach Drugs
Family Pharmacy dba Family Pharmacy
Family Pharmacy dba Family Pharmacy
Family Pharmacy dba Family Pharmacy

Family Pharmacy of Siler City dba Family Pharmacy of Siler City
Family Prescription Shop dba Family Prescription Shop
Farrell Drug Co. dba Farrell Drug Co.
Ferral Guillory dba Guillory's Thrifty Way Pharmacy
Field Pharmacy dba Field Pharmacy
Fitzgerald Lafayette Pharmacy dba Lafayette Pharmacy
Flurry's Cash Pharmacy dba Flurry's Cash Pharmacy
Forbes Drug Company dba Forces Drug
Ford Leader Drug Co. dba Ford Leader Health Mart
Ford's Big Chief Pharmacy dba Ford's Big Chief Pharmacy
Forstrom Pharmaceuticals, Ltd. dba Central Drug & Gifts
Fort Thomas Drug Center dba Fort Thomas Drug Center
Fournet's Thrifty-Way Pharmacy dba Fournet's Thrifty-Way Pharmacy
Francis J. Mingo dba Armour Drug and Gift
Frank M. Wallace dba Wallace Drug
Franklin Drug Company dba Franklin Drug Company
Franklin Park Medical Pharmacy dba Franklin Park Medical Pharmacy
Fred Hunter, Jr. dba Hunter's Drug Store
Fed Taylor dba Taylor Drug
Frederick Schmid dba Dexter Pharmacy
Frere Drug Co., Ltd dba Frere Drug
Frontier Drug dba Shatto's Frontier Drug
Fryers Pharmacy dba Fryers Pharmacy
Gable Family Pharmacy dba Gable Family Pharmacy
Galley's Prescription Center dba Galley's Prescription Center
Gardelle Drug dba Gardelle Drug
Garfield Enterprises dba Stanwood Pharmacy
Gary E. Moore, R.Ph dba Palace Drug
Gary M. Cowan dba G.M.C. Valu Mart
Gary S. Ravis dba Phil's Pharmacy
George Madden, R. Ph dba Medicine Shoppe of Clinton, SC
George Taylor dba Cecilia Pharmacy

Gerald H. Ray dba Medicine Shoppe #0472
Gerald H. Riggins dba Formerly Hardie's Drug Store
Gerard Conte dba Spring Lake Pharmacy
Gibson's Pharmacy #2 Thrifty Way-Pharmacy #2
Glasgow Prescription Center dba Glasgow Prescription Center
Glen Rock Medical Pharmacy dba Glen Rock Medical Pharmacy
Glenn Landry, Sr. dba Landwood Pharmacy
Glenn Namura dba Berthoud Drug
Gloria Usry dba Louisville Drug Co.
Godfrey, Arthur E. dba Godfrey's Pharmacy
Golden Springs Pharmacy dba Golden Springs Pharmacy
Goliad Pharmacy dba Goliad Pharmacy
Goodale Pharmacy dba Goodale Pharmacy
Goose Creek Pharmacy, Ltd. dba Goose Creek Pharmacy, Ltd.
Gordon Herpin dba The Prescription Shoppe
Graham Drug Company dba Graham Drug Company
Granville Drug dba Granville Drug
Green's Drug Store dba Green's Drug Store
Gustin L. Wood, R.Ph dba Economy Square Pharmacy
Gwen M. Genius dba Genius Drugs
Hackney-Rainey Enterprises dba Howell House Pharmacy
Hagerman Valley Medical Clinic Pharmacy dba Hagerman Valley Pharmacy
Harding Pharmacy dba Harding Pharmacy
Harlan Discount Drugs dba Harlan Discount Drugs
Harold A. Olson dba Modern Drug
Harold E. Hollman dba Hollman's Pharmacy
Harris Medical Building dba Harris Prescription Shop
Harrison's Pocomoke City Pharmacy dba Pocomoke City Pharmacy
Hart Pharmacy dba Hart Pharmacy
Harvey Greson dba Greeson's Pharmacy
Health & Beauty Aids Ltd dba Lakeland Pharmacy
Hemmat, Amir H. dba S & H Drug
Henry Brooks dba Brooks Drugs

Heritage Drug dba Heritage Drug
Herman Glassman dba Queen Pharmacy
Hick's Pharmacy dba Hick's Pharmacy
Higby's Pharmacy dba Higby's Pharmacy
Hill's Pharmacy dba Hill's Pharmacy
Hocks Vandalia Pharmacy dba Hock's Vandalia Pharmacy
Hodges Pharmacy dba Hodges Pharmacy
Holliday Pharmacy dba Holliday Pharmacy
Holmdel Village Pharmacy dba Holmdel Village Pharmacy
Home Medical Systems dba Island Medical (Rotech)
Home Medical Systems dba Wappoo Prescription Library
Homestead Pharmacy dba Homestead Pharmacy
Honea Path Pharmacy dba Honea Path Pharmacy
Hospital Drug Store dba Hospital Drug Store
HSP Prescriptions dba Hugh Snell's Prescriptions
Huff's Drug Store dba Huff's Drug Store
Hutchinson Drug Store dba Hutchinson Drug Store
Huttula, Tom dba Elma Pharmacy
Ideal Pharmacy dba Ideal Pharmacy
Independent Pharmacy Consultants dba Tioga Drug Store
Irvine Drugs dba Irvine Drugs
Island Pharmacy dba Island Pharmacy
IV Care of Middle Georgia dba Option Care of Middle Georgia
IV Care of Middle Georgia dba Option Care of Middle Georgia
J&J Pharmacy, Inc dba Centennial Drug
J & J Professional Pharmacy dba J & J Professional Pharmacy
J & R Pharmacy dba J & R Pharmacy
J and M Drugs dba Bowen Drugs
J W Staggs dba Formerly Center Drug Company
J. Clarence Jackson, R. dba Maxwell House Pharmacy
J. Marshall McCranie dba The Apothecary
J. Michael Ross. R.Ph. dba Blythewood Pharmacy
J. Richard Lominick, Jr dba Lominick's Drugstore
J. T. Lindsey dba Omega Pharmacy
J. T. Ricketson dba Ricketson Drug Co.

J. William Hite, Jr. dba Hite's Pharmacy
J.S. Ulmers, Jr. dba Elloree Pharmacy
Jack B. Shaw, R.Ph. dba Shaw's Pharmacy #1
Jack N. Williams dba Hot Springs Pharmacy
Jack P. Padgett, Jr., R.Ph dba Padgett's Drive-In Pharmacy
Jackson's Drug of Monticello dba Jackson's Drug Store
Jacob B. Summerville dba North Caddo Drug Co.
James B. Kennedy dba Kennedy Drugs
James B. Phillips dba Phillips Pharmacy
James C. Kelley, R.Ph dba Script Shop Pharmacy
James C. Pierson dba Delta Drug & Gift
James D. Buie, Jr. dba Woodbine Pharmacy
James D. McKenzie dba McKenzie Drugs
James E. Lynn dba Smithfield Pharmacy
James H. Caruso, Jr.. dba Caruso Drug Store
James H. Hawks, III, R. Ph dba Hawks Pharmacy
James H. Irsfeld dba Irsfeld Pharmacy
James H. O'Glee dba Mall Pharmacy
James Hall Emerson dba New Winnfield Drug Co.
James I. Thomas dba Garry's Pharmacy
James J. Brothers dba Brothers Pharmacy
James K. Coleman dba Alderson Pharmacy
James Lynn Cross dba Main Drug Co.
James M. Greene, Jr., R.Ph. dba Skrip Shoppe Pharmacy
James R. King dba Crittenden's Drug Store
James R. Malone, Jr. dba Malone Drug Company
James R. White dba White Pharmacy
James Rystedt dba Jim's Rexall Drug
James S. Alexander dba Alexander's Pharmacy
James S. Burks dba Pocahontas Pharmacy
James T. Collier dba Collier's Pharmacy
James T. Vincent, R.Ph. dba Vincent Drugs
James W. Shaw dba Formerly Nahunta Drugs
Jarvis Mark Reed dba Reed's Drug Store
Jay's Pharmacy dba Oschwald Pharmacy
Jaydip Pharmacy dba Jaydip Pharmacy
Jeffrey Phillip Lemon dba Lemon's Pharmacy

Jensen Drug dba Jensen Drug & Floral
Jep Castleberry dba Castleberry Drug Co
Jerriet W. Page dba Duncan Pharmacy
Jerry Bennett, R.Ph dba Jerry's Pharmacy
Jerry Stone dba King's Pharmacy and Jerry's Pharmacy
Jill M. Hanson dba High Country Drug
Jim and Phil's Family Pharmacy, Ltd. dba Jim and Phil's Family Pharmacy, Ltd.
Jim Stanley dba Village East Drugs
Jim's Discount Pharmacy dba Jim's Discount Pharmacy
Jim's Pharmacy, P.A. dba Jim's Pharmacy, P.A.
Jo Ann Freeman dba The Medicine Shoppe #0139
Joe A. Plemons, R.Ph dba Plemons Pharmacy
Joe W. Lawson, R.Ph. dba Prescriptions Only
Johansen, Robin E. dba Fairhaven Pharmacy
John A. Yakim dba Shirer's Pharmacy
John C. Marion, Pharmacist, P.C. dba John C. Marion, Pharmacist, P.C.
John D. Hames dba Montezuma Drug Co.
John Ewing dba Cox-Ewing Northside Pharmacy
John J. Yuscavage and Joseph Yuscavage dba Triangle Pharmacy
John Morgan dba Morgan's Pharmacy
John P. Charles dba J & J Pharmacy
John P. Forlenza dba Forlenza's Pharmacy
John Pecorino dba John's Pharmacy
John R. Bowen dba Candler Pharmacy
John S. DeFever dba DeFever Osborn Healthmart
John S. DeFever dba Gibsons Rx Center
John S. DeFever dba Healthmart of Parsons
John Svendsen dba Medical Park United Drug
John V. Price dba Price Pharmacy
John W. Holden dba John Holden Pharmacy
Johnnie E. Sutton dba Kinston Clinic North Pharmacy
Johnson's Pharmacy dba Johnson's Pharmacy
Johnson, Mark dba Tick Klock Drug
Jones Drug dba Jones Drug

Jones Drug Co dba Jones United Drug Co
Jones Drug Company of Franklin dba Jones Drug Company
Jones Prescription Shop dba Jones Prescription Shop
Joseph A. Deleo dba Wissinger's Pharmacy
Joseph A. Deleo dba Wissinger's Pharmacy
Joseph A. Deleo dba Wissinger's Pharmacy
Joseph C. Lauricella dba The Medicine Shoppe
Joseph M. Maxwell, Jr. dba Maxwell Pharmacy
Joseph P. Lech dba Lech's Pharmacy
Joseph W. Meyer dba Hospital Pharmacy
Jost Pharmacy dba Jost Pharmacy/This Way Pharmacy
Judy Sherar dba Tyler Downtown Drugs
K.D. Gaskins dba Paulk's Pharmacy
K2Red, L.L.C. dba Sav-Mor Drug of Buhl
Kaminski, Paul dba Darrington Pharmacy
Katterman, Beverly Ann dba Katterman's Sand Point Pharmacy
Keeler Pharmacy dba Keeler Pharmacy
Keith M. Sande dba Skyline Drug
Kelly Healy dba Orem Pharmacy
Kelsave Drugs dba Kelsave Drugs
Ken Gaskins dba City Pharmacy
Ken-Mar Family Drugs dba Ken-Mar Family Drugs
Kenneth A. Weber dba Weber Pharmacy
Kenneth R. Hawkins, R.Ph dba Ken's Rx Discount Pharmacy
KFS Distributing dba Allen Park Drugs
Kinard Battleground Drug dba Kinard Battleground Drug
Kings Drug dba King's Peachtree Battledrugs
Kingsway Limited dba Kingsway Pharmacy
Kitsap Pharmacy (Frmly N K Medical Center Pharmacy) dba Kitsap Pharmacy
Klecka Drug dba Klecka Drug
Koch Drug Co. dba Koch Drug Co.
Koonce Drug Company dba Koonce Drug
L. I. Ezra Apothecary Ltd. dba Ezra Pharmacy

L.E. Godwin, III dba Plains Pharmacy
Labrenz Pharmacy dba Labrenz Pharmacy
Lafferty, Barry D. dba Barry Lafferty's Rx Pharmacy
Lake Centre Pharmacy dba Lake Centre Pharmacy
Lakeland Drug Company dba Lakeland Drug
Lakeside Drug Company dba Lakeside Drug
Lakeview Pharmacy dba Lakeview Pharmacy
Larry McManus dba Larry's Drug Shoppe
Larry McMichael dba McMichael Drug Company
Larry Whitman dba Whitman Pharmacy
Larson, Richard J. dba Oroville Pharmacy
Lawrence H. Hill dba Payless Drug, Liquor & Sporting Goods
Lawson & Cromer Pharmacy dba Lawson & Cromer Pharmacy
Lear Pharmacy dba Lear Pharmacy
Lee R. Taylor dba Eldorado Pharmacy
Lee's Pharmacy, Ltd. dba Lee's Pharmacy, Ltd
Lee-Ann Drug dba Lee-Ann Drug
Lena Drug Store dba Lena Drug Store
Leo M. Lucci dba Galeton Drug
Leonard Muse dba Green Valley Pharmacy
Lewisboro Pharmacy dba Cross River Pharmacy
Lewisport Pharmacy dba Lewisport Pharmacy
Lexington Prescription Center dba Lexington Prescription Center
Linden Heights Pharmacy dba Allen's Pharmacy
Littleton Pharmacy dba Littleton Pharmacy
Livonia Pharmacy dba Livonia Pharmacy
Lloyd Warner dba Warner's Drug
Lloyd Warner dba Warner's Pharmacy
Loop Plaza Pharmacy Co. dba Loop Plaza Discount Pharmacy
Louis Drug dba Ettinger Drug & Surgical
Lowen's Drug Store dba Lowen's Drug Store
Ludwig Pharmacy dba Ludwig Pharmacy
Lust, Gerald E. dba Gerry's Pharmacy
Lynda Staggs dba Formerly Whitesport Pharmacy

Lynda T. Dysart and Lynn Dysart dba Mableton Pharmacy
Lyndhurst Drug Co. dba Lyndhurst Drug/Fox # 1
Lyon's Pharmacy dba Lyon's Pharmacy
Maag Prescription & Medical Supply dba Maag Prescription & Medical Supply
Mack D. Scherler, R.Ph dba The Medicine Cabinet
Mack's Pharmacy dba Mack's Pharmacy
Madison Avenue Pharmacy dba Madison Avenue Pharmacy
Manor Pharmacy & Surgical Supply dba Manor Pharmacy & Surgical Supply
Many Professional Pharmacy dba Many Professional Pharmacy
Maple Hill Pharmacy dba Maple Hill Pharmacy
Maple St. Clinic Pharmacy dba Maple St. Clinic Pharmacy
Marcrom's Pharmacy dba Marcrom's Pharmacy
Maret Drug Company dba Maret's Prescription Shop
Marjorie H. Lamar dba Madison Drug Company
Mark Barnes dba Barnes Pharmacy
Mark Ray Deevers, R.Ph. dba Elgin Discount Pharmacy
Mark's Corner Pharmacy dba Mark's Corner Pharmacy
Marrinna Kao dba Doctor Avenue Pharmacy
Martin W. Nie dba Nie's Independence Pharmacy
Martin's Drug Store dba Martin's Drug Store
Martin's Pharmacy dba Martin's Pharmacy
Marto Drug & Supply Co dba Physician's Pharmacy
Marvin A. Schlabs dba Century Pharmacy Sunset
Matthew E. Leon dba West End Pharmacy
Max C. Brown dba Max Brown Pharmacy
Max Kemp, R.Ph dba Kemp's Drug Store
McNab Drug Company dba McNab Drug Company
Medical Arts Pharmacy dba Medical Arts Pharmacy
Medical Arts Pharmacy of Glasgow, P.C. dba Medical Arts Pharmacy
Medical Center Pharmacy dba Medical Center Pharmacy
Medical Center Pharmacy dba Medical Center Pharmacy
Medical Center Pharmacy dba Medical Center Pharmacy
Medical Center Pharmacy dba Medical Center Pharmacy

Medical Park, Ltd. dba Plaza Discount Pharmacy
Medical Village Pharmacy dba Medical Village Pharmacy
Medicate Yociss Pharmacy dba Formerly Medicate Yociss Pharmacy
Medicine Man Pharmacy, Pa dba Medicine Man Pharmacy, Pa
Mel Howard dba Jones Pharmacy
Mentzer, Randy dba Randy's Prescription Center
Mercury Drive Pharmacy dba Mercury Drive Pharmacy
Meuble Non-Finis dba The Medicine Shoppe II
Michael A Douglas dba Mike's Medical Pharmacy
Michael and Susan Nelson dba Nelson's Hometown Pharmacy
Michael and Susan Nelson dba Nelson's Hometown Pharmacy
Michael D. Lyon dba Elfers-Lyon Pharmacy
Michael D. McGee and David H. Kellogg dba McCall Drug
Michael J. Eisler and Lynn A. Parkel dba Medicine Shoppe Pharmacy
Michael L. Mann dba Rose Hill Pharmacy
Michael Overman dba Lord's Drug Store
Michael S. Bernsten dba Provo Pharmacy
Middle Neck Pharmacy dba Middle Neck Pharmacy
Middlesex Borough Pharmacy dba Middlesex Borough Pharmacy
Midway Pharmacy dba Midway Pharmacy
Mike's Mercantle Co. dba Mike's Mercantile Co.
Mikel J. Rogers, R.Ph dba Medicine Chest
Mikel's Drive-In Pharmacy dba Mikel's Pharmacy
Miller of Wyckoff dba Miller of Wyckoff
Miller Pharmacy dba Miller Pharmacy
Miller's Pharmacy dba Miller's Pharmacy
Milton C. Bowling, Jr. & Edward L. Miller dba Lanier Medical Park Pharmacy
Mimbs Drug Co. dba Dixie City Pharmacy
Mimbs Drug Co. dba Dixie City Pharmacy

Mimbs Drug Co. dba Dixie City Pharmacy
Modern Drugs of Bayou La Batre dba Modern Drugs of Bayou La Batre
Moderne Pharmacy dba Moderne Pharmacy
Monroe Drug dba Monroe Drug
Montpelier Pharmacy dba Montpelier Pharmacy
Morgan Drug Store dba Morgan Drug Store
Morgan Drug Store dba Morgan Drug Store
Morris County Drugs dba Morris County Drugs
Morris, Malcolm T. dba White Center Pharmacy
Morse L Drugs dba Morse L Drugs
Mouton Pharmacy dba Mouton Pharmacy
Mr Discount Drugs dba Mr Discount Drugs
Mr Discount Drugs #2 dba Mr Discount Drugs #2
Mr Discount Drugs #3 dba Mr Discount Drugs #3
Mr Discount Drugs-Rush dba Mr Discount Drugs-Rush
Mr. Discount Drugs #1 dba Mr. Discount Drugs #1
Mr. Discount Drugs #3 dba Mr. Discount Drugs #3
Mt Horeb Pharmacy dba Mt Horeb Pharmacy
Mulvane Plaza Pharmacy, P.A. dba Mulvane Plaza Pharmacy, P.A.
Murphy's Drug dba Murphy Drug & Murphy Pharmacy
Murray & Elliston dba Wenatchee Clinic Pharmacy
Murray-Harris Drug Co. dba Akin Drug Co.
Myers Pharmacy dba Myers Pharmacy
Myhre, Blayne V. dba White Cross Pharmacy
Narrows Hometown Pharmacy Co. dba Narrows Hometown Pharmacy
National Medicine Center-Haines City, Fl dba Natl Medicine Ctr-Haines City (Rotech)
National Medicine Center-Winter Haven Fl dba Natl Medicine Ctr-Winter Haven (Rotech)
NC.R, I dba Venna Drug Center
Nelson's Pharmacy dba Nelson's Pharmacy
Nephi Professional Pharmacy dba Nephi Professional Pharmacy
New Kent Pharmacy dba New Kent Pharmacy
New Salem Pharmacy dba New Salem Pharmacy

Newts Discount Pharmacy, Ltd. dba Newts Discount Pharmacy, Ltd.
NHA, P.C. dba Fulton Pharmacy #1
NHA, P.C. dba Fulton Pharmacy #2
NHA, P.C. dba Fulton Pharmacy #3
NHA, P.C. dba Fulton Pharmacy #4
Nolensville Pharmacy dba Nolensville Pharmacy
Norris, W. Mark dba Beall's Pharmacy
North Columbus Pharmacy dba North Columbus Pharmacy
North Laurel Discount Drugs dba Quinn's Pharmacy
North Lima Pharmacy dba North Lima Pharmacy
North Wales Pharmacy, Ltd. dba North Wales Pharmacy, Ltd.
Northpark Pharmacy, Ltd. dba Acadiana East Pharmacy
Northtown Drug Company dba Goldenson Drugs
Novi Drug Company dba Novi Drug Company
Nyquist Pharmacy dba Nyquist Pharmacy
Oak Park Pharmacy dba Oak Park Pharmacy
Okmulgee Discount Pharmacy dba Okmulgee Discount Pharmacy
Olympus Pharmacy dba Olympus Pharmacy
Page Apothecary dba Page Apothecary
Pahrump Family Pharmacy dba Pahrump Family Pharmacy
Palace Drug dba Palace Drug
Palma Pharmacy Ltd dba Palma Chemists
Panka Drug dba Black Hills Medical Pharmacy
Par Apothecary dba The Medicine Cabinet
Park Avenue Chemists Ltd. dba Boghen Pharmacy
Parker Road Drug Store dba Parker Road Drug Store
Pat Martin's Pharmacy dba The Medicine Shoppe
Pat's Pharmacy dba Pat's Pharmacy
Patricia A. Savoie dba Savoie's Pharmacy
Patricia Lou Greenhaw dba Greenhaw Pharmacy
Paul J. Husak dba The Medicine Shoppe
Paul Potier dba Potier's Family Pharmacy

Paul Stevenson, Nicholas Stevenson, Arthur Brothers dba Overman & Stevenson Pharmacy
Paulsen's Pharmacy dba Paulsen's Pharmacy
Payless Express dba Payless Express
Payless Pharmacy dba Payless Pharmacy
Pearson Drugs #7, LLC dba Pearson Drugs #7
Penn Family Pharmacy dba Penn Family Pharmacy
Penslow Pharmacy dba Penslow Pharmacy
Perry Leleux dba Leleux's Pharmacy
Peter X. Konicki dba Konicki Pharmacy
Peter X. Konicki dba Winola Pharmacy
Petersburg Pharmaceuticals, Ltd dba Sycamore Professional Pharmacy
Petersburg Pharmaceuticals, Ltd. dba Cyrus Kirkpatrick Pharmacy
Pharma-Card Prescription Services dba Pharma-Card
Pharma-Card Prescription Services dba Pharma-Card
Pharma-Card Prescription Services dba Pharma-Card
Pharma-Card Prescription Services dba Pharma-Card
Pharmacon, P.A. dba Damm Pharmacy
Pharmacon, P.A. dba Derby Drug
Philip B. Kaser and Josephine H. Kaser dba Harvard Avenue Drugs
Philip Paasch dba Sylvan Clinic Pharmacy
Philip W. Beard dba Phil's Pharmacy
Phillip B. Sollon dba Sollon Pharmacy
Phillip Dugas dba Dugas Drugs
Phillips Pharmacy dba Phillips Pharmacy
Pirilla, Leonard dba Perry Drug Store
Plains Pharmacy of Wayne Township dba Plains Pharmacy of Wayne Township
Plumbrook Prescription Centre & Home Health Care dba Plumbrook Prescription Centre & Home Health Care
Polk City Pharmacy dba Polk City Pharmacy (Rotech)
Prescription Center of SW Ohio dba Centerville Pharmacy
Prescription Drug Foundation dba Prescription Drug Foundation

Prescription Lab Pharmacy dba Prescription Lab Pharmacy
Preston Socora Pharmacy dba Preston Socora Pharmacy
Prince Bay Pharmacy dba Prince Bay Pharmacy
Prizel's Pharmacy dba Prizel's Pharmacy
Professional Pharmacy dba Professional Pharmacy
Professional Pharmacy & Convalescent Products, Ltd. dba Professional Pharmacy
Professional Pharmacy of Greer dba Professional Pharmacy of Greer
Pruett's Cut-Rate Pharmacy dba Pruett's Pharmacy
Putnam Pharmacy dba Ray Drug Co.
R-x Prescription Shop, LLC dba R-x Prescription Shop #1
R. David Burch dba Burch Discount Drugs
R. Wayne Murphy Enterprises dba R. Wayne Murphy Drugs
Rad Pharmacy dba MacGillivray's Pharmacy
Rainbow Drug dba Rainbow Drug #1
Rainbow Drug dba Rainbow Drug #2
Raleigh's Drug Store dba Raleigh's Drug Store
Ralph M. Bertolino dba Bertolino Pharmacy
Ralph Place Pharmacy dba Ralph Place Pharmacy
Ralph Schwartz Company dba Schwartz Pharmacy
Randall K. Overton dba McNew Pharmacy
Randel G. Gum dba The Prescription Shop
Randy And Diane Harrop dba R-D Pharmacy & Books
Ray E. Burhenn dba Burhenn's Pharmacy
Ray Yawn dba Ray's Pharmacy
Ray's Prescription Pharmacy dba The Medicine Shoppe
Raymond A. McBrearty dba Hamilton Drugs
Raymond E. Robertson dba Robertson's Family Pharmacy
Raymond's Family Pharmacy dba Raymond's Pharmacy
Reagan Pharmacy dba Reagan Pharmacy
Reaman Shawnee Pharmacy dba Reaman Shawnee Pharmacy
Red Cross Pharmacy dba Red Cross Pharmacy
Red Rock Drug Company dba Corner Drug
Redmond, Robert And Mary dba Valley Mission Homecare

Renegar Drug Store dba Renegar Drug Store
Richard A. Hull dba Robertson's Pharmacy
Richard Autin dba Stewart's Drug Store
Richard D. Anderson dba A & D Pharmacy
Richard H. Gustafson dba Westmoreland Drug Co.
Richard J. Fuchs dba Dick's Pharmacy
Richard Rock dba Ideal Drugs
Rick D. Lee And Bill A. Lee dba Medical Arts Pharmacy
Ricky R. Anderson, R.Ph dba Moore Medical Center Pharmacy
Ridgway Prescriptions dba Ridgway Pharmacy
Rite Drug dba Rite Drug
Rn Pharmacy Ltd dba Warrenfield Pharmacy
Roan Mountain Pharmacy dba Roan Mountain Pharmacy
Rob Lee's Pharmacy dba Lee's Rx
Robert A. Musso dba L & M Pharmacy
Robert B. Coulter dba Red Cross United Drug
Robert C. Manutes dba Village Pharmacy
Robert C. Tyler dba Tyler's Gem Pharmacy
Robert E. Howell dba Medicine Shoppe
Robert E. Lee Sandlin dba Cox Colonial Pharmacy #3
Robert F. Hennessy dba Hennessy's Pharmacy
Robert G. Strong dba Coles Pharmacy
Robert I. Bylone, Sr. dba Liberty Square Pharmacy
Robert J. McWilliams, Jr. dba McWilliams Pharmacy
Robert L. Cousins dba De Blanc Pharmacy
Robert M. Bell dba Ross Pharmacy
Robert M. Chapman, R.Ph dba Cash Saver Pharmacy
Robert M. Pete Herod, R.Ph dba Pete Herod Drug a/k/a Herod Drug
Robert Moore dba Moore's Pharmacy
Robert N. Dishman, R.Ph And James H. Ford, R.Ph dba Gibson Discount Pharmacy
Robert P. Ward dba Ward's Pharmacy
Robert Park dba Powell's Riverside Plaza Pharmacy and Powell's Riverside
Robert T. Moss, Jr. R.Ph. dba Moss Pharmacy

Robert W. Piavis, Jr. dba Maloney's Pharmacy
Robery S. Perry, R.Ph. dba Riley's Drugs
Robin L. Voight dba Aloha Pharmacy
Rock Drug Store dba Rock Drug Store
Rod F. Waeckerlin dba BI-Rite Professional Pharmacy
Rodger Myer dba Sheffield Pharmacy
Roffler, Ronald dba McCleary Pharmacy
Roger A. Quinn dba Quinn's Pharmacy
Rogers Drugs #3 dba Rogers Drugs #3
Ronald Baker dba Baker Drug Company
Ronald J. Franck dba Avalon Community Pharmacy
Ronald R. Horvath dba Village East Drugs
Ronald R. Olson dba Olson's Chippewa Pharmacy
Ronnie E. Thrift dba The Medicine Shoppe
Ronnie Guidry dba Guidry's Cashway Pharmacy
Ronnie Haydel dba Ronnie's Drug Store
Ronnie Russell Bilks, R.Ph dba Sherrill's Pharmacy
Rx Prescription Center dba Buffalo Rx Prescription Center
S & P Drug Co. dba Ocmulgee Drug Co.
S.O.S. Drug Company dba S.O.S Drug
Saint Joseph's Apothecary dba Saint Joseph's Apothecary
Salata, Mykola I. dba Yeager's Pharmacy
Salem Pharmacy dba Salem Pharmacy
Sallander, Mark dba Mark's Pharmacy
Sam C. Brian, Jr. dba Court House Pharmacy
Sam's Drug Store dba Sam's Drug Store
Samuel D. Brog And Harold L. Brog dba Brog Pharmacy
Sandy Springs Medical Center Pharmacy dba Sandy Springs Pharmacy #2
Santa Rosa Pharmacy dba Santa Rosa Pharmacy
Saratoga Pharmacy dba Saratoga Pharmacy
Schlabs, Marvin A. dba Century Pharmacy Greenway
Scott A. Vinci dba Dusini Drug
Sequim Plaza Pharmacy, Ind. dba Sequim Plaza Pharmacy
Sewanee Pharmacy dba Sewanee Pharmacy
Shafer Apothecary & Surgical dba Shafer Apothecary & Surgical

Shafer, Connie dba Fifth Avenue Prescription
Sharlea Leatherwood dba Blue Valley Pharmacy
Sharlea Leatherwood dba North Oak Pharmacy
Shearer Drug dba Shearer Drug
Sherbin Pharmaceuticals dba Southampton Pharmacy
Sherman H. Drake dba Drake's Rx Center
Shoppers Prescription Center dba Shoppers Prescription Center
Showers And Hays Drugs dba Showers And Hays Drugs
Shute's Drug Center dba Shute's Drug Center
Siegel's dba Siegel's
Silver Lake Pharmacy dba Silver Lake Pharmacy
Skagit Valley Medical Ctr Pharmacy dba Skagit Valley Medical Center Pharmacy
Smith Drug dba Smith Drug
Smith Pharmacy dba Smith Pharmacy
Smith, Dennis A. dba Apothecary Shoppe Pharmacy
Smith, Donald R. & Kathie J. dba Medicine Man West Pharmacy
Smith, Lloyd R. dba Zillah Drug Store
Somerset Pharmacy dba Somerset Pharmacy
South Salem Pharmacy dba South Salem Pharmacy
South Windsor Pharmacy dba South Windsor Pharmacy
Southeast Pharmacy, P.C. dba Southeast Pharmacy
Sparta Pharmacy dba Sparta Pharmacy
Sparta Village Pharmacy dba Momber Pharmacy
Spears Pharmacy dba Spears Pharmacy
Spencer M. Player, R.Ph. dba Price Wise Pharmacy #48
St. Amant Pharmacy dba St. Amant Pharmacy
St. George Pharmacy dba St. George Pharmacy
Staker's Drugs East dba Staker's Drugs East
Standard Drug Store dba Standard Drug Store
Stanley Lefkowitz and Robert Lefkowitz dba Penn-Taft Pharmacy
Starnes Drug Co. dba Family Drug Center
Steger Drug Company dba Steger Drug Company
Stephen D. Adams Pharmacies dba Farr's Prescription Shop

Stephen D. Hunter dba The Medicine Shoppe
Stephen R. Krittenbrink R.Ph dba Krittenbrink Pharmacy
Stephen Pharmacy dba Stephenson Pharmacy
Steve Burman dba Burman's Pharmacy
Steve's Corner Drug dba Steve's Corner Drug
Steven R. Willingham, R.Ph dba Perkins Drug
Stimac, George S. dba Market Street Pharmacy
Stone Pharmacy, PC dba Peters Pharmacy
Stone Plaza Pharmacy dba Stone Plaza Pharmacy
Suburban Pharmacy Company dba Suburban Pharmacy Liggett
Summers Pharmacy dba M & K Health Enterprises, L.C., d/b/a Summers's Pharmacy
Sung Ha Baik dba Lawrence Pharmacy
Super Aid Pharmacy, Partnership dba Super Aid Pharmacy
Super Discount Drugs dba Super Discount Drugs
Super Discount Pharmacy dba Super Discount Pharmacy
Super Drugs dba Super Drugs
Surrey Center Pharmacy dba Surrey Center Pharmacy
Swann Pharmacy dba Swann Pharmacy
Swanson, Patrick L. dba Swanson's Save-Rite Pharmacy
T.M. Bridges dba Hardes Drug Store
Tappantown Chemists, Ltd dba Tappantown Liggett Rexall
Tavis, Adele dba Rochester Drug & Variety
Terry's Apothecary dba Terry's Pharmacy
The Crisp Apothecary Limited dba Crisp Drugs
The Daleville Prescription Shoppe dba The Daleville Prescription Shoppe
The Drug Shop dba The Drug Shop
The Drug Shoppe dba The Drug Shoppe
The Kohout Company dba Kohouts Rose Hill Pharmacy
The Kohout Company dba Lakeview Medical Pharmacy
The Medicine Shoppe dba The Medicine Shoppe
The Medicine Shoppe dba The Medicine Shoppe
The Medicine Shoppe of Iberia dba The Medicine Shoppe of Iberia
The Pilling Station dba Dadeland Medical Pharmacy
The Prescription Shop dba The Prescription Shop

The Professional Pharmacy dba The Professional Pharmacy
The Star Cut Rate Drug Co. dba Star Leader Drug c/o Mr. Robert Wallick
The Troutman Drug Co. dba The Medicine Man
The Troutman Drug Co. dba The Troutman Drug Co.
Thigpen Pharmacy dba Thigpen Pharmacy
Thomas L. West dba Tart & West Druggists
Thomas M. Quinlan dba Quinlan's Pharmacy
Thomas St. Martin dba St. Martin's Pharmacy
Thompson Enterprises dba Thompson Pharmacy
Thompson Enterprises dba Thompson Pharmacy
Thompson's Pharmacy dba Thompson's Pharmacy
Thompson-Hagan Drug Co. of Christiansburg, Va dba Thompson-Hagan Drug
Thrif-T-Way Pharmacy of Louisiana dba Thrif-T-Way Pharmacy of Louisiana
Thrift City Family Pharmacy dba Thrift City Family Pharmacy
Thrifty Way Pharmacy dba Babineauxs Thrifty Way Pharmacy
Thrifty Way Pharmacy dba Thrifty Way Pharmacy
Thrifty Way Pharmacy of Ville Platte dba Thrifty Way Pharmacy
Tiffany Davis Drug Co. dba Tiffany's Drug #70 (Formerly Tiffany's T-Mart)
Tiffany-Davis Drug Co. dba Tiffany's Drug #33
Tiger Drug Company dba Tiger Drug Company
Tim J. Sheehan dba Prospect Pharmacy
Timothy J. Kessler dba Kessler's Pharmacy
Tom Fortenberry dba Cal-Cam Pharmacy
Tom Heath dba Tom's Express Drug
Toups Cashway Pharmacy dba Toups Cashway Pharmacy
Town Center Pharmacy dba Town Center Pharmacy
Towne Pharmacy dba Towne Pharmacy
Trenton Discount Pharmacy dba Trenton Discount Pharmacy

Trivillians Pharmacy of Kanawha City dba Trivillians Pharmacy of Kanawha City
Tujague's Pharmacy & Gifts dba Tujague's Pharmacy & Gifts
Tullahoma Drug Store #2 dba Tullahoma Drug Store #2
Tyler Drug dba Tyler Drug
Union Pharmacy dba Union Pharmacy
Union Springs Pharmacy dba Union Springs Pharmacy
University Pharmacy dba Drake Infirmary
Unzer Pharmacy dba Unzer Pharmacy
Valley Pharmacy dba Valley Pharmacy
Valurx Discount Drug Center dba Big Value Discount Drug Center
Vaughn Independent Pharmacy dba Vaughn Pharmacy
Verlon Banks dba L B Clinic Pharmacy
Vian Pharmacy dba Vian Pharmacy
Vicklund Pharmacy dba Vicklund Pharmacy
Victor P. Steele, R.Ph dba Chaney Drug
Village East Drugs/Green Valley dba Village East Drugs
Village Medex Limited dba Village Medex Drugs
Village Pantry #9 dba Art City Pharmacy
Vise's Discount Pharmacy dba Vise's Discount Pharmacy
Voshell's Pharmacy dba Voshell's Pharmacy
W. Carter Gorman dba Monfort Drug Company
W. Taylor Dominy dba Medical Arts Discount Drugs
W.B. Fry dba Fry's Prescription Pharmacy
Wal-Mart Pharmacy of Ardmore dba Wal-Mart Pharmacy of Ardmore
Wal-Mart Pharmacy of Duncan dba Wal-Mart Pharmacy of Duncan
Wal-Mart Pharmacy of Hugo dba Wal-Mart Pharmacy of Hugo
Wal-Mart Pharmacy of Idabel dba Wal-Mart Pharmacy of Idabel
Wal-Mart Pharmacy of Marlow dba Wal-Mart Pharmacy of Marlow
Wal-Mart Pharmacy of Sallisaw dba Wal-Mart Pharmacy

Walker Drug dba Walker Drug
Walker Drug Company dba Walker Drug Company
Walker's Professional Pharmacy dba Heintish-Walker Pharmacy
Walt Donaldson dba Sav-Mor Professional Pharmacy
Walter F. Hale, Jr. dba Beaverdam Pharmacy
Walter R. Windell, Jr., R.Ph dba Southgate Drug
Warren Don Bulloch dba Bulloch Drug
Warren J. Guidry dba Jefferson Drug Store d/b/a Jefferson Drugs
Warsaw Valu-Rite Pharmacy dba Warsaw Drug
Waycross Pharmaceutical Assc. dba Best Rexall Drug
Wayne Crosby dba Eagle Drug Store
Wayne Waits dba Altamont Pharmacy
Weiner, Phillip Paul dba Weiner's Pharmacy
Wendell Sasser dba formerly as Nicholls Pharmacy
Wheeler's Pharmacy dba Wheeler's Pharmacy
Wherry, Bruce L. dba Bartons Center Pharmacy
Whiston Pharmacy dba Whiston Pharmacy
Whitacre Drug Store No. 3 dba Whitacre's Pharmacy
Whitacre Pharmacy dba Whitacre Pharmacy
White Star Discount Pharmacy of Troy, NC dba White Star Pharmacy
Whitehead Pharmacy dba Whitehead Pharmacy
Wilburn Brown dba Brown's Pharmacy
Wilkinson Pharmacy dba Wilkinson Pharmacy
William A George dba W.A. George Pharmacy
William A. Anglin dba Anglin's Drug Store
William E. Goldberg dba Bill's Pharmacy
William Forest Adair dba Adair Apothecary
William L. Greene dba Greene's Pharmacy
William R. Seitzinger dba Stapleton Pharmacy
Williamsburg Drug Co. dba Professional Pharmacy of Williamsburg
Winegars Pharmacy dba Winegars United Drug
Winston E. Batchelor dba Perkins Pharmacy
Wood Drug Co dba Wood Drug Co

Woodinville Medical Ctr Pharmacy dba Woodinville Medical Ctr Pharmacy
Woodrow Pharmacy Ltd dba Woodrow Pharmacy Ltd
Woodward Town & Country Pharmacy dba Woodward Town & Country Pharmacy
Woody Gaskins, Successor In Interest for 1st St Pharmacy dba First Street Pharmacy
Yesterday's Pharmacy dba Yesterday's Pharmacy
Zimmerman, Stuart J. dba University Pharmacy
1413 Fulton Street Pharmacy, Inc. dba 1413 Fulton Street Pharmacy, Inc.
1756 Pharmacy Inc dba Drug Rich Pharmacy
1st America Prescription Drugs, Inc. dba 1st America Drugs
2-D Chemist, Inc. dba Midvillage Pharmacy
2401 E. York St., Inc. dba Esterson's Drugs Corporation
30 Rockne Road, Inc. dba Ivylea Pharmacy
3049 Drug Corp. dba Supra Drug
31 & 202 Drugs, Inc. dba Wald Drugs
38th Street Pharmacy, Inc. dba 38th Street Pharmacy
4 W's Inc. dba Bill's Pharmacy
50 Market St Corp. dba Valley Pharmacy
60-24 Queens Blvd Pharmacy, Inc. dba RX King
78th Street Pharmacy, Inc. dba Hall's Pharmacy
815 Tonawanda St. Corp. dba Fay's Leader Drugs
9660, Inc. dba The Breckenridge Drug Store
A & H Stores, Inc. dba A & H Pharmacy #1
A & K Pharmacy, Inc. dba The Medicine Shoppe of Pottstown
A.E. Roedel Drug, Inc. dba A.E. Roedel Drug
A.P.R. Drug, Inc. dba People's Pharmacy
AAA Prescription Services, Inc. dba Odell's Prescription Pharmacy
Abel's Pharmacy, Inc. dba Abel's Pharmacy
ABP, Inc. dba Medical Park Tower Pharmacy
Ace Pharmacy, Inc. dba Stacy's Pharmacy Emory Village
Ackal's Iberia Pharmacy, Inc. dba Ackal's Pharmacy

Acton Pharmacy Co., Inc. dba Acton Pharmacy
Acworth Pharmacy and Drug, Inc. dba Formerly Acworth Pharmacy
Adams Drug Store, Inc. dba Adams Drug Store
Adams Drugs of Thomaston, Inc. dba Adams Drugs
Add, Inc. dba Add Drug Store
Africk Drugs Inc. dba Africk Drugs Inc.
Agler Drug, Inc. dba Northside Family Healthmart
Al Tell Pharmacy & Gift Shoppe, Inc. dba Al Tell's Pharmacy
Alamo Discount Pharmacy, Inc. dba Alamo Discount Pharmacy
Albany Pharmacy, Inc. dba Ervin's Drug West
Albost, Inc. dba Boulevard Drug Center
Alexander Drug Co., Inc. dba Alexander Drug Co.
Alexander Drug, Inc. dba Sav-Mor Drug
Alexandria Medicare Supply Co., Inc. dba Alexandria Medical Arts Pharmacy
Allan F. King Pharmacy, Inc. dba King Pharmacy
Allard's Bell Park Pharmacy, Inc. dba Allard's Pharmacy
Allcare Pharmacy Flowers & Gifts, Inc. dba Allcare Pharmacy Flowers & Gifts, Inc.
Allen's Discount Drug, Inc. dba Allen's Discount Drug, Inc.
Allen-Mack Pharmacy, Inc. dba Allen-Mack Pharmacy, Inc.
Allenmore Pharmacy, Inc. dba Allenmore Pharmacy
Allenmore Pharmacy, Inc. dba Puget Sound Pharmacy
Allmond and Whipple, Inc. dba City Drug Store
Allred & Jordan Drug Co., Inc. dba Allred & Jordan Co.
Almitron Enterprises, Inc. dba West End Pharmacy
Altamont Pharmacy, Inc. dba Altamont Pharmacy, Inc.
Altis World Inc. dba Palmetto Drugs
Alvin Davis, Inc. dba Al Davis Pharmacy
Amherst Pharmacy, Inc. dba Amherst Pharmacy, Inc.
Amoss Pharmacy, Inc. dba Amoss Pharmacy
Anchor Bay Pharmacy, Inc. dba Anchor Bay Pharmacy

Anderson County Discount Pharmacy, Inc. dba Anderson County Discount Pharmacy
Andrea Drug, Inc. dba Lenox Terrace Drugs
Andrepont Pharmacy, Inc. dba The Medicine Shoppe
Andrew Brown's Drug Store, Inc dba Andrew Brown's Drug Store
Andrews Drug Co., Inc. dba Alamance Andrews Drug Co.
Andrews Pharmacy, Inc. dba Andrews Pharmacy
Andrus Drugs, Inc. dba Earl Drug South
Antbrenco, Inc. dba D & H Drugstore
Anthony-Brown Pharmacy, Inc. dba Anthony-Brown Pharmacy, Inc.
Antietan Pharmacy, Inc. dba The Medicine Shoppe Corporation
Apothecare Hospital Supply & Pharmacy, Inc. dba Apothecare Pharmacy
Apothecare Pharmacy, Inc. dba Apothecare Pharmacy
Apothepedics, Inc. dba Apothepedics, Inc.
Applied Computer Technology, Inc. dba Addleman Drug Store
Ar-Ex Drug Store, Inc. dba Ar-Ex Drug Store, Inc.
Arcadia Pharmacy Inc dba Wayne Pharmacy
Arden Heights Pharmacy, Inc dba Arden Heights Pharmacy
Ardery Drug, Inc. dba Horne's Ardery Drug, Inc.
Ardiel, Inc. dba Seventh Avenue Pharmacy
Arlington Pharmacy, Inc. dba Arlington Pharmacy
Armonk Village Apothecary, Inc. dba Armonk Pharmacy
Arnold Drug Co., Inc. dba Arnold Drug Company #1
Arnold's Apothecary, Inc. dba Stewart's Pharmacy
Arthur Enterprises, Inc. dba S & W Pharmacy
Arthur's Drug Store, Inc. dba Arthur's Drug Store, Inc.
Arwood Drug Co., Inc dba Arwood Drug Co.
Athens Medical Arts Pharmacy, Inc. dba Hawthorne Drug Co.
Atlantic Ocean Apothecary, Inc. dba Atlantic Chemists
Atlee Cardinal Pharmacy, Inc. dba Atlee Pharmacy
Austin Pharmacy, Inc dba Austin Pharmacy

Avenue Pharmacy of Oak Park, Inc. dba Avenue Pharmacy of Oak Park, Inc.
Avera Drug Co., Inc. dba Avera Drug Co.
Avery Drugs, Inc. dba Avery Drugs
B & B Center Pharmacy, Inc. dba Owens Pharmacy
B & B Pharmacy Services, Inc. dba B & B Pharmacy and Camera Center
B & D Smith, Inc. dba Ben's Super Drugs
B & L, Inc. dba Boyd's Drug Mart
B and K Prescription Shop, Inc. dba B and K Prescription Shop, Inc.
B-Z, Inc. dba Belle Meade Drugs
B.L. Thomaston, Inc. dba Cody Pharmacy
B.K. Drugs, Inc. dba Ken's Pharmacy
Babington's Drug Store, Inc. dba Babington's Drug Store
Bacon Park Pharmacy, Inc. dba Bacon Park Drugs
Baconsfield Pharmacy, Inc dba Chichester's Baconsfield Pharmacy
Bagwell Pharmacy, Inc. dba Bagwell Pharmacy
Bahmer Enterprises, Inc. dba Bahmer's Howland Pharmacy
Baker Pharmacy, Inc. dba Baker Pharmacy, Inc.
Baker's Pharmacy, Inc. dba Baker's Pharmacy
Bakersville Pharmacy, Inc. dba Bakersville Pharmacy, Inc.
Baldwin Drugs, Inc. dba Baldwin Drugs, Inc.
Baldwin's Pharmacy, Inc. dba Baldwin's Pharmacy
Ball Pharmaceutical Services, Inc dba Weber's Drugstore
Bama, Inc dba Clark's Rexall Drugs
Band Prescriptions, Inc. dba Band Prescription-7 Mile
Bandy's Pharmacy, Inc. dba Bandy's Pharmacy, Inc.
Bankston Drug, Inc. dba Plaza Pharmacy
Banner Elk Pharmacy, Inc. dba Banner Elk Pharmacy, Inc.
Barbee Pharmacy, Inc. dba Barbee Pharmacy, Inc.
Barclay Pharmacy, Inc. dba Barclay Pharmacy
Barnes Drug Stores of Valdosta, Inc. dba Barnes Drug Store
Barney Zell's Pharmacy Inc dba Barney Zell's Pharmacy Inc
Barr's Pharmacy, Inc. dba Barr's Pharmacy, Inc.

Barrett & Tanner, Inc. dba Denton Drug Store
Barry's Pharmacy, Inc. dba Barry's Pharmacy
Barth Hinsdale Pharmacy, Inc. dba Vann's Drugstore
Base Enterprises of VA, Inc. dba Stoney Creek Pharmacy
Bass Pharmacy, Inc. dba Bass Pharmacy
Bates Drug Stores, Inc. dba Bates United Drug
Battle Ground Pharmacy, Inc. dba Battle Ground Pharmacy
Batts Drug Co., Inc. dba Batts Drug Co., Inc.
Bay Drug Corporation dba Drug Mart Discount Center
Bay Parkway Pharmacy Inc dba Bay Parkway Pharmacy Inc
Bay Street Pharmacy dba Bay Street Pharmacy, Inc.
Bay View Pharmacy, Inc. dba Bay View Pharmacy
Bear Drug, Inc dba Richmond Drug
Bears Den, Inc. dba Chi-Ches-Ters Ingleside Pharmacy
Beaverton Pharmacy, Inc. dba Beaverton Pharmacy
Bechtel's Pharmacy, Inc. dba Bechtel's Pharmacy, Inc.
Beckham's Pharmacy, Inc. dba Beckham's Pharmacy
Beggs Pharmacy, Inc. dba Beggs Pharmacy and Medical Equipment
Bell and Halpern Pharmacy, Inc. dba Bell and Halpern Pharmacy, Inc.
Bell Apothecary, Inc. dba Bell Apothecary, Inc.
Bellemeade Discount Drugs, Inc. dba Bellemeade Discount Drugs
Bellevue Pharmacy, Inc. dba Bellevue Pharmacy, Inc.
Bellina's Dixie Pharmacy, Inc. dba Bellina's Dixie Pharmacy
Bells Pharmacy Inc dba Bells Pharmacy
Belmont Pharmacy, Inc dba Belmont Pharmacy, Inc
Belvoir Pharmacy, Inc. dba Belvoir Pharmacy
Ben-Dee Corporation dba Hospital Discount Pharmacy
Benchi, Inc. dba Palatine Drug
Bennett Drug, Inc. dba Liberty Drug
Bennetts Valley Pharmacy, Inc. dba Bennetts Valley Pharmacy, Inc.
Benoit Thrifty Way Pharmacy, Inc. dba Benoit Thrifty Way Pharmacy

Benoit's Cashway Pharmacy, Inc. dba Benoit's Cashway Pharmacy
Benscreek Drug Store, Inc. dba Benscreek Pharmacy
Benson Drug Company, Inc. dba Benson Drug Company, Inc.
Benton Discount Pharmacy, Inc. dba Benton Discount Pharmacy
Berea Drug Co., Inc. dba Berea Drug Co., Inc.
Bergum Drug, Inc dba Bergum Drug I
Berkeley Pharmacy, Inc. dba Berkeley Pharmacy
Berkeley Springs Pharmacy, Inc. dba Berkeley Springs Pharmacy, Inc.
Bernie's Pharmacy, Inc. dba Bernie's Pharmacy
Bert's Pharmacy Inc dba Bert's Pharmacy
Besael Corporation dba Oak Park Pharmacy
Bethel Pharmacy, Inc. dba Bethel Pharmacy, Inc.
Bethpage Medical Pharmacy, Inc. dba Bethpage Medical Pharmacy, Inc.
Beyer Pharmacy, Inc. dba Beyer Pharmacy, Inc.
BF of St. Francis, Inc. dba Ben Franklin Store & Pharmacy
Bierman Pharmacies of Kern, Inc dba Southside Pharmacy
Bill Scott's Pharmacy, Inc. dba Bill Scott's Pharmacy
Billy Tye dba Eastside Drugs, Inc.
Billy's Pharmacy, Inc. dba Billy's Pharmacy, Inc.
Bismarck Pharmacy, Inc dba Bismarck Pharmacy
Bivens Drug, Inc. dba Bivens Drug Store
Black Rock Pharmacy Inc dba Black Pharmacy Inc
Black's Drug Store, Inc. dba Black's Drug Store
Blacker's Pharmacy, Inc. dba Blacker's Pharmacy
Bladen/Dryman Wynnton Pharmacy, Inc. dba Bladen Pharmacy
Blairs Drug Store, Inc. dba Blairs Drug Store
Blanchard Red Cross Drug, Inc. dba Red Cross Drug
Blount's Mutual Drugs, Inc. dba Blount's Mutual Drugs, Inc.
Blue Bell Pharmacy, Inc. dba Blue Bell Pharmacy
Bluffton Pharmacy, Inc. dba Bluffton Pharmacy, Inc.

Bobo's Drugs, Inc. dba Davis Islands Pharmacy
Bolingbrook Pharmacy, Inc. dba Bolingbrook Pharmacy, Inc.
Bolton Drug & Jewelry, Inc. dba Bolton Drug & Jewelry, Inc.
Bon Air Acquisition Corp. dba Buford Road Pharmacy
Bon Lieu Drugs, Inc. dba Bon Lieu Drugs, Inc.
Bond Enterprises, Inc. dba Olympic Pharmacy
Bonnie Bass, Inc dba Lovelace Family Medicine Center Pharmacy
Boonsboro Drug, Inc. dba Tom Jones Drugs
Borden's Pharmacy, Inc. dba Borden's Pharmacy, Inc.
Boudreaux's Family Pharmacy, Inc. dba Boudreaux's Family Pharmacy
Boulevard Drug Store, Inc. dba Boulevard Drug Store, Inc.
Bowdon Drug Co. Inc dba Bowdon Drug Co.
Bowen Pharmacy, Inc. dba Bowen Pharmacy
Bowman Drug, Inc. dba Bowman Drug, Inc.
Bowman's Pharmacies, Inc. dba Bowman's Medical Center Pharmacy
Bowman's Pharmacy South, Inc. dba Bowman's Southtowne Pharmacy
Boyt Drug Store, Inc. dba Boyt Drug Store
BP-Ace, Inc. dba Ace Drug Mart-Cameron
Brad-Road Corporation dba Medicine Chest Pharmacy
Bradford Drug Store, Inc. dba Bradford Drug Store
Bradshaw Drug, Inc. dba Bradshaw Drug
Bradshaw Pharmacy, Inc. dba Bradshaw Pharmacy, Inc.
Braescroft Pharmacy, Inc. dba Braescroft Pharmacy
Braswell Drug, Inc. dba Braswell Drugs
Bre-Don-Bon, Inc. dba Manor Pharmacy
Bright & George, Inc. dba Apple Discount Drugs
Brighton Pharmacy, Inc. dba Brighton Pharmacy, Inc.
Brighton-Ellert Pharmacy Inc dba Brighton-Ellert Pharmacy Inc
Brin Drugs, Inc. dba Les-On Drugs
Broad Avenue Pharmacy, Inc. dba Broad Avenue Pharmacy, Inc.

Broadmoor Drug Center, Inc. dba Broadmoor Drug Center
Broadway, Inc. dba Broadway Pharmacy
Brockway Drug Co., Inc. dba Brockway Drug Co., Inc.
Brooklyn Pharmacy, Inc. dba Brooklyn Pharmacy, Inc.
Brooks House Pharmacy, Inc. dba Town Rexall Pharmacy
Brooks Pharmacy, Incorporated dba Brooks Pharmacy
Brooks-Byrd Pharmacy, Inc. dba Brooks-Byrd Pharmacy, Inc.
Brookside Shopping Center Drug Corp dba Liggett Pharmacy
Brothers Drug Corp. dba Variety Drugs
Broussard's Pharmacies, Inc. dba Broussard's Pharmacy
Brown's Drugs, Inc. dba Brown's Drugs
Brown's Pharmacies, Inc. dba Harrisonburg Pharmacy
Brown's Pharmacy of Portland, Inc. dba Brown's Pharmacy
Brownings Medical Arts Pharmacy, Inc. dba Brownings Medical Arts Pharmacy
Browns Pharmacies, Inc dba Park View Pharmacy
Browns Point Pharmacy, Inc. dba Brown's Point Pharmacy
Bruce A. Felts, Inc. dba Owl Drugs
Bruce Smith Drugs, Inc. dba Bruce Smith Drugs
Brunner's Pharmacy, Inc. dba Brunner's Pharmacy, Inc.
Bryan & Davis, Inc. dba Davis Pharmacy
Bryan Drugs of Tarboro, Inc. dba Bryan Drugs of Tarboro, Inc.
BTB-Lakeway, Inc. dba Lakeway Pharmacy
BTP Ace, Inc. dba Ace Drug Mart-Burnet
Buchanan's Drug Store, Inc. dba Buchanan's Drug Store, Inc.
Budget Pharmacy, Inc. dba Darel Pharmacy
Buffalo Pharmacy, Inc. dba Buffalo Pharmacy
Bull's Drug Store, Inc. dba Bull's Drug Store #2
Bungalow Drug, Inc dba Bungalow Drug
Bunker Hill Pharmacy, Inc. dba Bunker Hill United Drug
Bunkie Pharmacy, Inc. dba Bunkie Pharmacy
Burden Drug Center, Inc dba Burden Drug Center
Burgland Drug, Inc. dba Burgland Health Mart

Burke Apothecary, Inc. dba Burke Apothecary
Burlington Pharmacy, Inc. dba Burlington Pharmacy, Inc.
Burry's Pharmacy, Inc. dba Burry Pharmacy, Inc.
Burton's Pharmacy, Inc. dba Burton's Valurite Pharmacy
Butt Rexall Drugs, Inc. dba Butt Drugs
Buy-Rite Strickland Drugs, Inc. dba Buy-Rite Drugs
Byard Pharmacy, Inc. dba Byard Pharmacy, Inc.
Byrnes Pharmacy, Inc. dba Byrnes Pharmacy, Inc.
C & B Pharmacy, Inc. dba Hospital Discount Pharmacy
C & C Apothecary, Inc. dba C & C Apothecary, Inc.
C & C Drugs, Inc. dba Holbrook Drug
C & C Pharmacy, Inc. dba C & C Pharmacy
C & S Scripts, Inc. dba Brice Road Pharmacy
C and C Drugs, Inc. dba C and C Drugs
C&D Foreman, Inc. dba The Medicine Shoppe #994
C&E Drug Centers, Inc. dba Claude's Pharmacy
C.D.S. #1 Pharmacy, Inc. dba Williams Drug Company
C.J.L. & M., Inc. dba Springhill Pharmacy
C.O. Bigelow Chemists, Inc dba Bigelow Pharmacy
C.P.P., Inc. dba Packer Park Pharmacy
C.S. Family Pharmacy, Inc. dba formerly Cee Bee's Pharmacy, Inc.
Cagera, Inc dba Medical Center Pharmacy
Callaghan's Pharmacy, Inc. dba Callaghan's Pharmacy, Inc.
Calvert Arundel Medical Center Pharmacy, Inc. dba Calvert Arundel Pharmacy
Cammack's Pharmacy, Inc. dba Jim's Pharmacy & Home Health
Camp Road Pharmacy, Inc. dba Camp Road Pharmacy, Inc.
Camp's Prescription Shop, Inc. dba Watkinsville Drugs
Campbell's Pharmacy, Inc. dba Campbell's Pharmacy
Campbells Drug Store, Inc. dba Campbells Drug Store
Caneyville Drugs, Inc dba Caneyville Drugs
Cantner's Inc. dba Cantner's Drug Store
Canton Pharmacy, Inc. dba Canton Pharmacy, Inc.
Capitol Pharmacy, Inc. dba Capitol Pharmacy
Capps Daniels Drug Co., Inc. dba Capps Daniels Drug

Car Ed, Inc dba Arway Pharmacy
Carel's Drug Mart, Inc. dba Carel's Pharmacy
Carl D. Taylor's Pharmacy, Inc. dba Taylor's Pharmacy
Carlen Corp dba Briargrove Pharmacy
Carlton's Pharmacy, Inc. dba Carlton's Pharmacy
Carney Drug Co., Inc dba Carney Drug Co
Caro Pharmacy, Inc. dba Caro Pharmacy, Inc.
Carolina Apothecary, Inc. dba Carolina Apothecary, Inc.
Carr's Pharmacy, Inc. dba Carr's Pharmacy
Carroll County Medical Supply, Inc. dba New Windsor Pharmacy
Carroll County Medical Supply, Inc. dba Taneytown Pharmacy & Medical Supply
Carson Drugs, Inc. dba Carson Drugs
Carter's Ortega Pharmacy, Inc. dba Carter's Pharmacy/ Drugs
Carter's Park & King Pharmacy, Inc. dba Carter's Drugs
Carter's, Inc. dba Carter's Drug Store
Carter-Miles Pharmacy, Inc. dba Carter-Miles Pharmacy
Cartimsea, Inc. dba Clemson Drug Co.
Cascade Heights Pharmacy, Inc. dba Cascade Heights Pharmacy, Inc.
Cascade Pharmacy, Inc. dba Cascade Pharmacy
Cash & Henderson Drugs, Inc. dba Cash & Henderson Drugs, Inc.
Cashway Pharmacy of Jeanerette, La, Inc. dba Cashway Pharmacy of Jeanerette
Castle Drugs, Inc. dba Castle Drugs
Castle Pharmacy, Inc. dba Medical Center Pharmacy
Castle Rock Pharmacy, Inc. dba Castle Rock Pharmacy
Cathedral Pharmacy Inc dba Cathedral Pharmacy Inc
Causey's Pharmacy, Inc. dba Causey's Pharmacy
Cave Run Pharmacy, Inc. dba Cave Run Pharmacy, Inc.
Cedar Creek Pharmacy, Inc. dba Cedar Creek Systems, Inc.
Cedar Drugs, Inc. dba Cedar Drugs
Celito Corporation dba Dorneyville Pharmacy
Central Discount Drugs, Inc. dba Central Discount Drugs, Inc.

Central Drug Store of Darlington, Inc. dba Central Drug Store
Central Drug, Inc. dba Central Drug, Inc.
Central Pharmacy & Hospital Equipment Co., Inc. dba Central Pharmacy
Central Pharmacy, Inc. dba Central Pharmacy North
Central Rexall Drugs, Inc. dba Central Rexall Drugs
Century Centre Pharmacy, Inc. dba Century Centre Pharmacy
Century Pharmacy Murray Hill, Inc. dba Century Pharmacy Murray Hill, Inc.
Century Pharmacy Sherwood, Inc. dba Sherwood Plaza Pharmacy
CFK, Inc. dba The Medicine Shoppe #863
Chancy Discount Drugs, Inc. dba Chancy Discount Drugs
Chandler's Pharmacy, Inc. dba Chandler's Pharmacy
Charles G. Moye, Inc. dba Moye Pharmacy
Charles Mead Pharmacy, Inc. dba Charles Mead Pharmacy
Charles Pharmacy, Inc. dba Berryhill Pharmacy
Charles S. Aimar Pharmacy, Inc. dba Airmar's Pharmacy
Charles' Pharmacy, Inc. dba Charles' Pharmacy
Charleston Clinical & Health Servies, Inc. dba Medical Plaza Pharmacy
Charlie's Disocunt Drug, Inc. dba Charlie's Discount Drug, Inc.
Charlotte Pharmacy, Inc. dba Charlotte Pharmacy, Inc.
Chartin Pharmacy Corp. dba Meyer's Drugs
Chastains' Inc. dba Owl Tri State Pharmacy
Cheek & Scott Drugs, Inc. dba Cheek & Scott Drugs
Cheek Rexall Pharmacy, Inc. dba Cheek Pharmacy, Inc.
Chelten Pharmacy, Inc. dba Chelten Pharmacy, Inc.
Cherokee Discount Drug, Inc. dba Cherokee Discount Drug
Cherokee Pharmacy & Medical Supply of Dalton, Inc. dba Cherokee Pharmacy & Medical Supply #2
Cherokee Pharmacy and Medical Supply, Inc. dba Cherokee Pharmacy #3-Keith St
Cherry Tree Pharmacy, Inc. dba Medicap Pharmacy

Cherryvale Pharmacy, Inc. dba Cherryvale Pharmacy, Inc.
Chesley Drug, Inc. (Late Opt-Out) dba Chesley Drug
Chester Pharmacy, Inc. dba Magee's Chester Pharmacy
Chewelah Pharmacy, Inc. dba Platters Pharmacy
Child's City Drugs, Inc. dba Child's City Drugs, Inc.
Chipley Drugs, Inc. dba City Drugs
Chris' Pharmacy, Inc. dba Chris' Pharmacy, Inc.
Circle Pharmacy, Inc. dba Circle Pharmacy, Inc.
Circle View Pharmacy, Inc. dba Circle View Pharmacy
Cisler Pharmacy, Inc. dba Baars Pharmacy
City Drug Co. of Manchester, Ga. Inc. dba City Drug Co.
City Drug Company, Inc. dba City Drug Co.
City Drug of Coweta, Inc. dba City Drug a/k/a City Rexall Drug
City Drug of Idabel, Inc. dba City Health-Mart Drug a/k/a City Drug
City Drug Store of Parsons, Inc. dba City Drug Store of Parsons, Inc.
City Drug Store, Inc. dba City Drug Store
City Drug Store, Inc. of Henderson TN, Inc dba City Drug Store, Inc. of Henderson
City Drugs of Grove Hill, Inc. dba City Drugs of Grove Hill, Inc.
City Pharmacy & Med., Inc. dba City Pharmacy & Med.
City Pharmacy, Inc. dba City Healthmart
Clantons Drug Store, Inc. dba Clantons Drug Store, Inc.
Clarendon Pharmacy Consultants, Inc. dba Clarendon Pharmacy
Clarion Development Corporation dba Marianne Pharmacy
Clark Drugs, Inc. dba Clark Drugs, Inc.
Clarkesville Drug, Inc. dba Clarkesville Drug, Inc.
Claxton-Graves, Inc. dba Graves Pharmacy
Clayton & Edward's Pharmacy, Inc. dba Clayton & Edward's Pharmacy, Inc.
Clayton & Lindberg Corp. dba Frontenac Drugs
Cle Elum Drug, Inc dba Cle Elum Drug
Clear Creek Pharmacy, Inc. dba Clear Creek Pharmacy

Clear Healthvision, Inc. dba Banbury Pharmacy
Cleveland Corp. dba Rexco Pharmacy
Clifford's Rexall Store, Inc dba Preb's Market Square Pharmacy
Clinard Drug Co., Inc. dba Clinard Drug Co., Inc.
Cline's Pharmacy, Inc. dba Cline's Pharmacy
Clinic Pharmacy, Inc. dba Clinic Pharmacy, Inc.
Clinical Center Pharmacy, Inc. dba Clinical Center Pharmacy
Clincial Pharmacy, Inc. dba Clinical Pharmacy
Clinkscales Drugs, Inc. dba Clinkscales Drugs, Inc.
Cloverleaf Quality Drugs, Inc. dba Cloverleaf Quality Drugs, Inc.
CME IV, Inc. dba CME IV, Inc.
Coastal Discount Pharmacy, Inc. dba Coastal Discount Pharmacy
Coffman Drug Store, Inc. dba Coffman Drug Store, Inc.
Coker Pharmacy, Inc. dba Ball Ground Pharmacy
Colburn's Northport Pharmacy, Inc. dba Northport Pharmacy
Cole-McGill Enterprises, Inc. dba Liberty Square Family Pharmacy
Coleman Pharmacy Inc. dba Coleman Pharmacy
Coleman's Drug Store, Inc. dba Coleman's Drug Store, Inc.
Coles Drug, Inc. dba Owl Drugs #2
Coliseum Park Professional College Pharmacy, Inc. dba Coliseum Park Professional Pharmacy
College Drugs, Inc. dba College Drugs, Inc.
College Pharmacy, Inc. dba City Drugs
Colley Discount Pharmacy, Inc. dba Colley Discount Pharmacy
Collins Drug Co. Inc. dba Collins Drug Co.
Collins Pharmacy, Inc dba Collins Pharmacy & Medical Equipment
Collins RX, Inc. dba Owl Drugs
Colonial Pharmacy of Contoocook, Inc. dba Colonial Village Pharmacy-Supermarket

Colony Discount Drugs, Inc. dba Colony Discount Drugs
Colony Pharmacy, Inc. dba The Pharmacy Counter #3
Colton Pharmacies, Inc. dba Colton Pharmacy (Eatonville)
Columbus Prescription Pharmacy, Inc. dba Columbus Prescription Pharmacy, Inc.
Colynn Corporation dba Macey's Pharmacy
Commerce Drug Co., Inc. dba Commerce Drug Co.
Commonwealth Pharmacy, Inc. dba Commonwealth Pharmacy, Inc.
Community Drug Stores, Inc dba Community Drug
Community Pharmacy of Ann Arbor, Inc. dba Community Pharmacy of Ann Arbor, Inc,
Community Pharmacy, Inc. dba Jones Pharmacy
Concord Drugs, Inc. dba Concord Drugs #21, Inc. dba Concord Drugs #21
Concordia Drug, Inc. dba Concordia Drug
Congaree Pharmacy, Inc. dba Congaree Pharmacy
Consumer's Pharmacy, Inc. dba Consumer's Pharmacy, Inc.
Contact Pharmacy, Inc. dba Contact Pharmacy, Inc.
Conyers Pharmacy, Inc. dba Conyers Pharmacy
Cook's Pharmacy of Exeter, Inc. dba Cook's Pharmacy of Exeter
Cook's Pharmacy of Kingston, Inc. dba Cook's Pharmacy of Kingston
Cook's Pharmacy of Shickshinny, Inc dba Cook's Pharmacy of Shickshinny
Cook's Pharmacy Services, Inc. dba Cook's Pharmacy
Cook's Pharmacy, Inc. dba formerly Cook's Pharmacy
Cooke's Pharmacy, Inc. dba Cooke's Pharmacy, Inc.
Cooley Apothecary, Inc. dba Cooley Apothecary, Inc.
Copeland Drug Company, Inc. dba The Rexall Store
Corley and McClendon Drugs, Inc. dba Corely Drugs
Corley Home Health Care, Inc. dba Corley Drugs #4
Corley-McLendon Drugs, Inc. dba Corley Drugs #3
Cornell Medical, Inc. dba Conroy's Pharmacy
Corner Drug, Inc. dba Corner Drug
Corner Drugs, Inc. dba Harbin's Corner Drugs

Cornwells Pharmacy, Inc. dba Cornwells Pharmacy, Inc.
Cosdamian Corp dba The Prescription Shop
Cost Less Prescriptions, Inc. dba Cost Less Prescriptions
Cost Plus Prescriptions, Inc. dba Cost Plus Prescription Store I
Costa Drugs, Inc dba Costa Drugs
Cottongim Drug Company, Inc. dba Cottongim Drug Company, Inc.
Coughlin Enterprises, Inc. dba The Medicine Shoppe
Country Road's Pharmacy, Inc. dba County Roads Pharmacy, Inc.
County Drug, Inc. dba Kelly's County Drug
Court House Pharmacy, Inc. dba Court House Pharmacy, Inc.
Courthouse Pharmacy, Inc. dba Courthouse Pharmacy, Inc.
Courtnage Drug Co., Inc dba Strawberry Point Drug, Inc
Courts Village Pharmacy, Inc dba Courts Village Pharmacy, Inc
Covington Pharmacy, Inc. dba Covington Pharmacy
Cowan Pharmacy, Inc dba Cowan Pharmacy and/or Cowan's Gibson Pharmacy
Cox Pharmacy, Inc. dba Cox Pharmacy
Cox's Pharmacy, Inc. dba Cox's Pharmacy #5
Cox's Pharmacy, Inc. #1 dba Cox's Pharmacy, Inc. #1
Cox's Pharmacy, Inc. #2 dba Cox's Pharmacy, Inc. #2
Crabapple Enterprises, Inc dba Medical Center Pharmacy
Craft's Prescription Pharmacy, Inc. dba Craft's Prescription Pharmacy Inc
Craig's Drug Store, Inc dba Craig's Drug Store
Craig-West, Inc. dba Hancocks Drug Store
Creech Drug Co. Inc dba Creech Drug Co., Inc
Cresent City Pharmaceuticals, Inc. dba Hospital Drug Store
Cresetti Drug Corp dba Neergaard Pharmacy
Crestwood Pharmacy, Inc dba Crestwood Pharmacy
Crichton Estates, Ltd. Inc. dba Cheasapeake Pharmacy
Cripps-France Pharmacy, Inc. dba Cripps-France Pharmacy
Cromer Drugs, Inc. dba Lo-Rex Drugs

Crossnore Rexall Drug Store, Inc dba Crossnore Drug Store, Inc.
Crouch's Inc. dba Ideal Drug Store
Crowleys, Inc. dba Crowley Pharmacy
Crown Drugs, Inc dba Crown Drugs
Crown Heights Pharmacy Inc dba Apple Drugs
Crystal Pharmacy, Inc. dba Crystal Pharmacy
Cumberland Apothecary, Inc. dba Cumberland Apothecary, Inc.
Cumberland Drug Co., Inc. dba Crossville Discount Pharmacy
Cundiff Drug Store, Inc. dba Cundiff Drug Store
Cundiff's Blue Ridge Pharmacy, Inc. dba Blue Ridge Pharmacy
Cunningham Pharmacy Inc dba Cunningham Pharmacy Inc.
Cupp Drug Store, Inc. dba The Corner Drug Store
Cuppy's Pharmacy, Inc. dba Cuppy's Pharmacy, Inc.
Curl's Pharmacy, Inc. dba Curl's Pharmacy
Curry Pharmacy-Clinton, Inc. dba Curry Pharmacy
Curry Pharmacy, Inc. dba Curry Pharmacy
Curtis Discount Drug, Inc. dba Curtis Discount Drug
Curtis Pharmacy, Inc. dba Durtis Pharmacy, Inc.
D & D Drugs, Inc. dba Super D Drugs #209
D & L Family Drugs, Inc. dba Sav-Ins Health Mart
D & R Thomas, Inc. dba Moses Lake Clinc Pharmacy
D-J Drug Distributor, Inc. dba Sav-Mor Drug
D.W. Millers Pharmacies, Inc. dba Millers Pharmacy
D.A.P. Inc dba Burke's Main Street Pharmacy
D.B. Lutz, Inc. dba Rhoads Pharmacy
D.B.M. Distributors, Inc. dba Key Pharmacy
D.C. Drugs Inc dba Ocean Park Drugs
D.C. Stiles, Inc. dba Preston Pharmacy
D.D.C., Inc. dba Davis Drug Co.
D.H. Bynum Enterprises, Inc. dba Drury's Drugs
D.M.T., Inc. dba D & M Pharmacy
Dabco Pharmacies, Inc. dba Harrup's Pharmacy
Dafler Pharmacy, Inc. dba Dafler Pharmacy, Inc.

Dahlonega Pharmacy, Inc. dba Dahlonega Pharmacy
Daigle Drug Co., Inc. dba Folsom Pharmacy
Dajob, Inc dba Brookshire Bros. Pharmacy
Dakota Drug and Jewelry, Inc. dba Dakota Drug and Jewelry, Ltd.
Damasius, Inc. dba Vyto's Pharmacy
Dan's Drugs, Inc. dba Dart Drugs and Surgical
Dan's Pharmacy, Inc. dba Carrollwood Pharmacy
Dana L. Eck, R.Ph and Eck Drug & Gift, Inc. dba Eck Drug & Gift
Dandurand Drug Co., Inc. dba Dandurand Drug Co., Inc.
Dania Discount Drugs, Inc. dba Dania Rexall Pharmacy
Daniel's Drug Shop, Inc. dba The Drug Shop
Daniel's Pharmacy #3, Inc. dba Daniel's Pharmacy #3, Inc.
Daniel's Pharmacy of Norway, Inc. dba Daniel's Pharmacy-Norway, Inc.
Daniel's Pharmacy, Inc. dba Daniel's Pharmacy
Danielson & Hanson, Inc. dba Green & Jackson Drug
Danielson Pharmacy, Inc. dba Bonneville Pharmacy
Danville Pharmacy, Inc. dba Lonsinger Pharmacy
Darby Pharmacies, Inc. dba Clinic Pharmacy
Darien Pharmacy, Inc. dba Rogers Drug Co.
Dast Pharmacy, Inc dba Dast Pharmacy, Inc.
Dave's Eagle Supermarket, Inc. dba Dave's Pharmacy
Dave's Village Drugs, Inc. dba Dave's Village Drugs
Davenport Pharmacy, Inc. dba Davenport Pharmacy
David M. Smith, R.Ph, Inc. dba Means-Lauf Super Drug
David W. Stephenson Corp. dba Suburban Pharmacy
David's Drug & Surgical Shop, Inc. dba David's Drug & Surgical Shop
David's Pharmacy, Inc. dba Center Pharmacy
Davidson Drugs, Inc. dba Davidson Drugs
Day Mor, Inc. dba El Dorado Pharmacy
DCV, Inc dba Point Place Drugs dba Darrell R. Vaughn
DDM, Inc dba Donelson Drug Mart
De Franco Pharmacy, Inc. dba De Franco Pharmacy, Inc.
Deal's Drug Store, Inc. dba Deal's Drug Store

Deco, Inc. dba Turner Prescription Center
Dee-Car, Inc. dba Medical III Pharmacy
Dees Drug Store, Inc. dba Dees Drug Store, Inc.
Degoler's Inc. Prescription Druggists dba Degoler's Pharmacy
Degutis Pharmacy, Inc. dba Degutis Pharmacy, Inc.
DeKalb Pharmacy & Medical Supply, Inc. dba DeKalb Pharmacy
Del Palacio Corporation dba Riverton Family Pharmacy
Delaunay's Health Mart Pharmacy, Inc. dba Delaunay's Health Mart Pharmacy
Delco Pharmacy, Inc dba Delco Pharmacy
Dell's Pharmacy, Inc. dba Dell's Pharmacy
Delray Shores Pharmacy, Inc dba Delray Shores Pharmacy
Delta Pharmacy, Inc. dba Delta Pharmacy, Inc.
Deltaville Pharmacy, Inc. dba The Medicine Shoppe #1177
Dennards, Inc. dba Dennard Drug and Jewelry
Derby Pharmacy Inc dba Derby Pharmacy Inc
Desai and Desai, Inc. dba Hoffman Pharmacy
Desert Hot Springs Drugs, Inc dba Destert Hot Springs Drugs
Detman, Inc. dba Bayside Pharmacy
Devcor Inc dba Bend Rexall Drug
Dexter Pharmacy, Inc. dba Frederick Schmid, Inc. dba Bailes Pharmacy
Dexter Rx Center, Inc. and Grand Delinc. dba Dexter Rx Center, Inc. and Grand Delinc.
DGA Pharmacy Corporation dba Salzman Chemists
Dick's Pharmacy, Inc. dba Dick's Pharmacy, Inc.
Dickson Drug Co., Inc. dba Dickson Drug Co., Inc.
Dicus-Thrifty-Wise Pharmacy, Inc. dba Dicus-Thrifty-Wise Pharmacy, Inc.
Diekmann & Hare Enterprises Inc. dba Coventry Pharmacy
Dille's Pharmacy Inc dba Dille's Discount Prescription Shoppe
Dinwiddie Drug Store, Inc. dba Dinwiddie Drug Store, Inc.
Discount Drug Mart, Inc. dba Discount Drug Mart, Inc.

Discount Drugs of Dalton, Georgia, Inc dba Valu-Rite Discount Pharmacy
FDBA Wal-Mart Discount Phar
Discount Drugs of Ellijay, Ga, Inc. dba Valu-Rite Discount Pharmacy, formerly d/b/a Wal-Mart
Discount Med Mart, Inc. dba Discount Med Mart
Dixie Pharmacy, Inc. dba Dixie Pharmacy
Dixon Drug Company, Inc. dba Dixon Drug Company
Dixon-Powers Drugs, Inc. dba Dixon-Powers Drugs, Inc.
Dodd Development, Inc dba Smith Drug Gifts, Inc
Don Auld's Rx Shop, Inc dba Don Auld's Prescription Shop
Don Flentge Drug, Inc. dba Don Flentge Drug
Don Houston, Inc. dba DeSoto Drug
Don K. Richie, Inc. dba Calhoun Drug Co.
Don Peterson Drug Inc dba Sater Pharmacy
Dorsu Drug Inc. dba Hudson Parkway Pharmacy
Doubek Pharmacy, Inc. dba Doubek Pharmacy, Inc.
Douglass Pharmacy, Inc. dba Douglass Pharmacy, Inc.
Downtown Drug Stores, Inc dba Downtown Drug Stores
Doyle's Pharmacies, Inc. dba Doyle's Pharmacies
Doyles Corner Drug, Inc. dba Conleys Drug Store
Dracut Center Pharmacy, Inc. dba Dracut Center Pharmacy
Drake, Inc dba Drake's Prescriptions
Drive-In Pharmacy, Inc. dba Drive-In Pharmacy, Inc.
Drug Center Pharmacy, Inc. dba Drug Center Pharmacy #2
Drug Center, Inc. dba Murfreesboro Drug Center #1
Drug Center, Inc. dba Woodbury Drug Center
Drug City-Hull Howard H. Coplan dba Drug City, Inc.
Drug Fair, Inc. dba Drug Fair, Inc.
Drug Mart Pharmacy Corporation dba Drug Mart Pharmacy Corporation
Drug Service Care, Inc. dba Tuxedo Pharmacy
Drug, Inc. dba Hill's Valu-Rite Pharmacy Hill's Rexall Drug
Drugs Are Us, Inc. dba Warren County Pharmacy
Drum Plaza Pharmacy, Inc. dba Drum Plaza Pharmacy, Inc.
Duluth Professional Pharmacy, Inc. dba Duluth Professional Pharmacy

Durand's Drugs, Inc. dba Durand Drugs
Duval's Pharmacy, Inc dba Duval's Pharmacy
Duvall Drugs, Inc. dba Duvall Drugs, Inc.
Dyal's Pharmacies, Inc. dba Dyal's Pharmacies, Inc.
Dybas Pharmacy, Inc. dba Dybas Pharmacy, Inc.
Dykstra Drug Store, Inc. dba Dykstra Drug Store, Inc.
Dyna-Medic Drug Co., Inc. dba Leo's Day & Night Pharmacy
DeGoler's Inc Prescription Druggists dba DeGoler's Pharmacy
Eagle Drugs Co., Inc. dba Eagle Drugs
Earl Drug, Inc. dba Earl Drug, Inc.
Earl W. Gsell & Co., Inc. dba Earl W. Gsell & Co., Inc.
East Goshen Pharmacy, Inc. dba East Goshen Pharmacy, Inc.
East Nor Drugs, Inc dba East Norwich Pharmacy
East Point Drug Shoppe, Inc. dba South Fulton Drug Shoppe
East Side Pharmacy, Inc. dba East Side Pharmacy, Inc.
Eastin Pharmacy, Inc. dba Eastin Pharmacy
Eastman Drugs, Inc. dba Eastman Drugs
Eastside Drugs, Inc. dba Eastside Drugs, Inc.
Eastside Pharmacy of Cynthiana, Inc. dba Eastside Pharmacy of Cynthiana, Inc.
Eck Drug Co., Inc. dba Eck Drug Co., Inc.
Economical Pharmacies, Inc. dba Economical Pharmacies
Economy Drug Co. of Albany, Inc. dba Economy Drug
Economy Drug Company, Inc. dba Economy Drug Company, Inc.
Economy Drug Store, Inc. dba Economy Drug Store, Inc.
Economy Drugstore of Winnsboro, Inc. dba Economy Drugstore
Economy Pharmacy, Inc dba Economy Pharmacy, Inc
Economy Rexall Drugs, Inc. dba Economy Drugs
Ed's Pharmacy, Inc. dba Ed's Pharmacy
Eddie's Pharmacy, Inc. dba Eddie's Pharmacy
Eden Drug, Inc. dba Eden Drug, Inc.

Edgehill Drugs, Inc dba Edgehill Pharmacy #1
Edgewood Pharmacy, Inc. dba Edgewood Pharmacy
Edwards & Anthony Pharmacy Inc dba Edwards & Anthony Pharmacy
Edwards Pharmacy, Inc. dba Edward's Pharmacy
Efsco Prescriptions, Inc. dba Stowell's Allenmore Pharmacy
Ehardt's Pharmacy, Inc. dba Ehardt's Pharmacy #1
Eklund Pharmacy, Inc. dba Preston's Pharmacy
Eldron, Inc. dba Goody Economy Drug
Eliot Drug Inc dba S & A Pharmacy
Elixir, Inc dba Chletcos Apothecary
Ellicottville Pharmacy Inc dba Ellicottville Pharmacy
Elmwood Village Drug Mart Inc dba Elmwood Village Drug Mart Inc
Ely Drugs, Inc. #2 dba Ely Drugs, Inc. #2
Emil W. Baker, Pharmacist, Inc. dba Emil W. Baker, Pharmacist, Inc.
Empire Professional Pharmacy, Inc. dba Empire Professional Pharmacy
Eppy's Drug Store, Inc. dba Eppy's Drug Store, Inc.
Ernco, Inc. dba Clay Drug
Ernest Knight Drugs, Inc. dba Jones Drug Co.
Esco Drugco Inc dba Esco Drugco Inc
Esenbee, Inc. dba Bolton Health Mart
Essco Discount Drug Center, Inc. dba Essco Discount Drug Center
Eta Home Health Care, Inc. dba The Prescription Shop
Evangeline Drug Store, Inc. dba Evangeline Drug Store
Evans City Drug Store, Inc. dba Evans City Drug Store, Inc.
Evergreen Drug Company, Inc dba Evergreen Drug
Eye & Ear Pharmacy, Inc dba Cavallini's Pharmacy
F. & L., Inc. dba Faulkner and Lawson Drug Company
F.W. Richards, Jr., Inc. dba F.W. Richards, Jr., Inc.
Fairmount Pharmacy, Inc. dba Fairmount Pharmacy
Fairwood Pharmacy, Inc. dba Fairwood Pharmacy

Family Care Pharmacy, Inc. dba Family Care Pharmacy
Family Discount Pharmacy, Inc. dba Family Discount Pharmacy, Inc.
Family Drug Store, Inc. dba Tieton Village Drug
Family Health Centers, Inc. dba Channell Drugs
Family Medical Pharmacy of Dallas, Inc. dba Family Medical Pharmacy
Family Pharmacy, Inc. dba Family Pharmacy
Family Prescription Center, Inc. dba Family Prescription Center, Inc.
Family Rexall Pharmacy, Inc./(Kaser Drugs, Inc.) dba Family Rexall Pharmacy
Farmer City Drug, Inc. dba Farmer City Drug, Inc.
Farmer's Prescription Shop, Inc. dba Farmer's Prescription Shop
Farmer's Sav-More Drugs, Inc. dba Farmer's Sav-More Drugs
Farmville Discount Drugs, Inc. dba Best Value Drug
Faulk Medical Services, Inc. dba Shoppers Pharmacy
Faulkner's Pharmacy, Inc. dba Faulkner's Pharmacy
Fayette Pharmacy, Inc. dba Fayette Pharmacy, Inc.
Feldman's Medical Center Pharmacy, Inc dba Feldman's Dorsey Hall Pharmacy
Feldman, Inc. dba Drug Center of Newtown
Felicity Pharmacy, Inc. dba Felicity Pharmacy, Inc.
Fellderdom Pharmacy, Inc. dba Waldinger's Pharmacy
Felpausch Pharmacy of Albion, Inc. dba Evans/Felpausch Pharmacy
Fenwick Proffessional Pharmacy, Inc dba Fenwick Professional Pharmacy
Ferguson Rexall Drugs, Inc. dba Ferguson Rexall Drugs, Inc.
Ferndale Pharmacy, Inc. dba Ferndale Drug Co.
Ferraro Enterprises, Inc. dba The Medicine Shoppe
Ferraro Limited, Inc. dba The Medicine Shoppe
Field's Pharmacy, Inc dba Field's Pharmacy
Fielder Park Pharmacy, Inc. dba Felder Park Pharmacy

Fievet Pharmacy, Inc. dba Fievet Pharmacy
Fife Drug, Inc. dba Fife United Drug
Fincastle Drugs & Sundries, Inc. dba Fincastle Drug Store
Finer Wyoming Pharmacy, Inc. dba Finer Drug
Finnel and Bond Pharmacy, Inc. dba Bond Pharmacy
First American Venture, Inc. dba Four Corners Pharmacy
First Elm Drug Corp.C dba Elm Drugs
Fishco, Inc. dba Fisher's Pharmacy
Fitzgerald Drugs, Inc. dba Fitzgerald Drugs, Inc.
Five Corners Pharmacy, Inc. dba Five Corners Pharmacy
Flanagan Pharmacy, Inc. dba Flanagan Pharmacy, Inc.
Fleming Drug Co., Inc. dba Fleming Drug Co.
Fleming Pharmacists Group, Inc. dba Colonial Village Pharmacy
Flowers' Pharmacy, Inc. dba Flowers' Pharmacy
Folkston Pharmacy, Inc. dba Folkston Pharmacy
Forbes Pharmacy Corp dba Medicap Pharmacy
Ford's Drugs & Medical, Inc. dba Ford's Drugs & Medical, Inc.
Fordham, Inc. dba Duncan Drugs
Forest Hills Pharmacy, Inc. dba Forest Hills Pharmacy
Fork Union Pharmacy, Inc. dba Fork Union Pharmacy, Inc.
Forshee-Cardr Pharmacies, Inc. dba Cherokee Pharmacy #4-Signal Mountain
Fort Hill Pharmacy, Inc. dba Fort Hill Pharmacy
Foss Company, Inc dba Foss Company, Inc.
Foster Corner Drug, Inc. dba Foster Corner Drug, Inc.
Fountain Drugs, Inc. dba Fountain Drugs, Inc.
Fowler's Pharmacy, Inc. dba Fowler's Pharmacy
Fox Drug Co., Inc. dba Fox Drug #10
Frakes & Harris, Inc. dba Frakes Pharmacy
Frank Westlake Pharmacy, Inc. dba Frank Westlake Pharmacy
Frank's Drug Store, Inc. dba Frank's Drug Store
Frank's Pharmacy, Inc. dba Frank's Pharmacy
Franklin Pharmacy, Inc. dba Franklin Pharmacy
Frederick & Smith, Inc. dba Clinic Pharmacy

Freeland Brown Marina Pharmacy, Inc. dba Freeland Brown Marina Pharmacy, Inc.
Freeland Brown Pharmacy, Inc. dba Freeland Brown Pharmacy
Freeland-Brown Glenoak Pharmacy, Inc. dba Glenoak Pharmacy
Frick Rexall Drug Inc dba Frick Drug
Fridley's Pharmacy, Inc. dba Fridley's Pharmacy, Inc.
Fronter Pharmacy Services, Inc. dba Frontier Pharmacy Services
Fruth, Inc. dba Fruth Pharmacy #1
Fulghum Drugs, Inc. dba Fulghum Drugs
Fulghum-Carr Drug Co., Inc. dba Fulghum-Carr Drug Co.
Fulton Drugs, Inc. dba Medicap Pharmacy
Fulton Pharmacy, Inc. dba Fulton Pharmacy
Funk Pharmacy, Inc. dba Funk Pharmacy, Inc.
Futrell Pharmacy, Services, Inc. dba Futrell Pharmacy Services, Inc.
G & G Drugs, Inc. dba Cain Drugs
G & G Pharmacy, Inc. dba G & G Pharmacy
G & H Pharmacy, Inc. dba Altama Discount Pharmacy
G & L Pharmacy, Inc. dba G & L Pharmacy, Inc.
G & W Pharmacy, Inc. dba English Pharmacy #1
G.G.S. Drugs Inc dba White Swan Pharmacy
G.R.C., Inc. dba Rudy's Hospital Pharmacy
G.V. Raj, Inc dba Marquet Pharmacy
Gaddy's Discount Drug, Inc. dba Gaddy's Discount Drug, Inc.
Gallo's Drug Store, Inc dba Gallo's Drug Store
Galloway Pharmacy, Inc. dba Galloway Pharmacy
Galveston Island Pharmacy, Inc. dba Island Pharmacy
Garrett's Pharmacy, Inc. dba Garrett's Pharmacy, Inc.
Garro Drug Store of Utica, Inc. dba Garro Drug Store of Utica, Inc.
Gary's Drug Centers, Inc. dba Gary's United Drug
Gassaway Apothecary, Inc. dba Gassaway Apothecary
Gate City Pharmacy, Inc. dba Gate City Pharmacy, Inc.

Gateway Pharmacy of Phoenixville, Inc. dba Gateway Pharmacy
Gatlin's Red & White, Inc. dba Gatlin's Discount Pharmacy
Gem Drugs Gramercy, Inc. dba Gem Drugs Gramercy
Gem Drugs Laplace, Inc. dba The Medicine Shoppe
Gem Drugs, Inc. dba Gem Drugs
Geo. J. Ellis Drug Company, Inc. dba Geo. J. Ellis Drug Company, Inc.
George C. Punches, Inc. dba Punches Pharmacy Plus
George Lawrence, Inc dba Baldwin Pharmacy
George's Pharmacy, Inc. dba George's Pharmacy
Gerdes Pharmacy Inc. dba Gerdes Pharmacy, Inc.
Gerken Pharmacy, Inc. dba Commonwealth Pharmacy
Gerlew Pharmacy, Inc. dba BMC Pharmacy
Germantown Pharmacy, Inc. dba Germantown Pharmacy & Home Health Care
Gessler Drug Company, Inc. dba Gessler Drug Lincoln Heights
Getman Drug, Inc. dba Getman Pharmacy
Getzville Pharmacy Inc dba Getzville Pharmacy Inc
Gibbons Pharmacy, Inc. dba Gibbons Pharmacy
Gibbs Pharmacy, Inc. dba Gibbs Pharmacy, Inc.
Gibson Pharmacy of Atoka, Inc. dba Wal-Mart Pharmacy of Atoka
Gibson's Pharmacy, Inc. dba Gibson's Pharmacy, Inc.
Gibsonburg Pharmacy, Inc. dba Pills 'n' Packages
Gig Harbor Pharmacy, Inc. dba Gig Harbor Rexall
Giliam Pharmacy, Inc. dba Giliam Pharmacy
Giuffria Inc. dba Chateau Drugs
Glades Discount Pharmacy, Inc. dba Glades Drugs
Glastonbury Towne Pharmacy, Inc. dba Towne Pharmacy
Glendean Drugs, Inc. dba Glendean Drugs
Glenn's Family Pharmacy, Inc. dba Glenn's Family Pharmacy
Glenpool Pharmacy, Inc. dba Medicap Pharmacy
Glenview Apothecary, Inc. dba Glenview Pharmacy

Globe Drug Corp. dba Claremont Chemists
Gloemco, Inc. dba Pinewood Pharmacy
Gloucester Pharmacy, Inc. dba Morgan's Drug Store
Gloyer's Pharmacy, Inc. dba Gloyer's Pharmacy
Golden Horseshoe Health Services, Inc. dba Greene Pharmacy
Goochland Pharmacy, Inc. dba Goochland Pharmacy
Goodyear Pharmacy, Inc. dba West Shore Pharmacy
Gordon Drugs, Inc. dba Gordon Drug Company
Gordon's Drug Store, Inc. dbs Gordon's Drug Store
Gordonsville Medical Pharmacy, Inc. dba Gordonsville Medical Pharmacy
Graham's Rexall Drug, Inc. dba Graham Drug or Grahams Family Pharmacy
Graham-Sego Corporation dba Sego Drugs
Grand Pharmacy, Inc. dba Grand Pharmacy, Inc.
Grand Street Pharmacy, Inc. dba Grand Street Pharmacy, Inc.
Grand Valley Pharmacy, Inc. dba Grand Valley Pharmacy, Inc.
Granite Falls Pharmacy, Inc. dba Mitchell's Pharmacy
Grant County Drugs, Inc. dba Grant County Drugs, Inc.
Grant's Family Drug Center Inc dba Grant's Health Mart Pharmacy
Grants Pass Pharmacy, Inc. dba Grants Pass Pharmacy
Grassy Sprain Pharmacy, Inc dba Grassy Sprain Pharmacy
Gratiot Community Apothecary, Inc. dba Gratiot Community Apothecary
Graves Drug Store Emporia, Inc. dba Graves Drug Store Emporia, Inc.
Gray Drug Co., Inc. dba Gray Drug Company
Grays Pharmacy, Inc. dba Grays Pharmacy, Inc.
Great Bridge Pharmacy, Inc. dba Great Bridge Pharmacy
Great Day Pharmacy, Inc. dba Great Day Pharmacy #353
Great Lakes Medical Care, Inc. dba Great Northern Drug
Green Wave Pharmacy, Inc. dba Green Wave Pharmacy

Greenvale Chemists & Surgical Supply Co, Inc dba Greenvale Pharmacy
Greenville Drug Co., Inc. dba Greenville Drug Co.
Greenville Drug Store, Inc. dba Greenville Drug Store, Inc.
Greenville Pharmacy, Inc. dba Greenville Pharmacy
Greenwood 65 Low Cost Rx, Inc. dba Greenwood 65 Low Cost Pharmacy
Griffin's Prescription Shop, Inc. dba Griffin's Prescription Shop
Griffith & Feil Drug, Inc. dba Griffith & Feil Drug, Inc.
Gross & Perez Pharmacy, Inc. dba Gross & Perez Pharmacy, Inc.
Grove City Pharmacy, Inc. dba The Medicine Shoppe
Grow Drug Co., Inc. dba Grow Drug Co.
Grubbs Pharmacy of DC, Inc. dba Grubbs Care Pharmacy
Gunn Drug Co., Inc dba Gunn Drug Co., Inc
Gunn Pharmacy, Inc. dba Gunn Pharmacy
Gunn's Pharmacy, Inc. dba Gunn's Pharmacy
Guthrie's Mount Bethel Pharmacy, Inc. dba Guthrie's Mount Bethel Pharmacy
Guthrie's Pharmacy, Inc. dba Guthrie's Pharmacy
Guthriesville Pharmacy, Inc. dba Guthriesville Pharmacy, Inc.
H & H Pharmacy, Inc. dba H & H Pharmacy
H & M Drugs, Inc. dba H & M Drugs
H & S Pharmacy of Chapel Hill, Inc. dba H & S Pharmacy of Chapel Hill, Inc.
H & S Pharmacy, No. 2, Inc. dba H & S Pharmacy No. 1
H & W Corp. dba Center Drugs
H & Z Pharmacy Inc dba Zatopek's Pharmacy
H and P Pharmacy, Inc. dba Heyman's Pharmacy
H-Lee Parrish, Inc. dba Barnes Drug
H. C. Grund Drug Co., Inc. dba Grund Drug Co.
H.A.R.S. Drugs, Inc. dba Family Drug Mart
Hadfields Prescription Pharmacy, Inc. dba Hadfields Pharmacy, Inc.
Hakala Apothecaries, Inc dba Belmar Pharmacy

Hal's Wyncote Pharmacy, Inc. dba Wyncote Pharmacy
Haldun, Inc dba Wheatridge Pharmacy
Hale B Thompson, Inc dba Thompson's Drug Store
Hall Drug Co., Inc. dba Hall Drug Co.
Hall's Drug Store, Inc. dba Hall's Drug Center
Halliday's Drugs, Inc. dba Halliday's & Koivisto's Pharmacy
Halpin's, Inc. dba Halpin's Pharmacy
Hamburg Village Drug Mart Inc dba Hamburg Village Drug Mart Inc
Hamilton Drug Co., Inc. dba Hamilton Drug Co.
Hampton Pharmacy, Inc. dba Hampton Pharmacy, Inc.
Hank's Pharmacy, Inc dba Hank's Pharmacy, Inc
Hanover Pharmacy, Inc. dba Hanover Pharmacy
Hapco Drugs, Inc. dba New England Pharmacy
Harber's Pharmacy, Inc. dba Harber's Pharmacy
Harbin's Prescription Shop, Inc. dba Harbin's Prescription Shop
Harbor Drug Co., Inc. dba Stevens Pharmacy
Harbor Drug, Inc. dba Harbor Drug
Hardeeville Pharmacy, Inc dba Hardeeville Pharmacy
Harford Pharmacy, Inc dba Harford Pharmacy
Harms Pharmacy, Inc. dba Harms Pharmacy
Harold Ryan Pharmacy, Inc. dba Ryan Pharmacy
Harpell Chemists, Inc. dba Harpell Chemists, Inc.
Harrah Pharmacy, Inc. dba Harrah Pharmacy
Harrico Galler Drug Corp. dba Harrico Galler Drug Corp.
Harrington's Professional Arts Pharmacy, Inc. dba Harrington's Pharmacy
Harris Pharmacy Inc dba Harris Pharmacy
Harry's Pharmacy, Inc. dba Harry's Pharmacy
Hart's Drug, Inc. dba Hart's Drug
Hartsville Drug Company, Inc dba Hartsville Drug Company
Hartwell, Inc. dba Dowagiac Pharmacy
Hartzell's Pharmacy, Inc dba Hartzell's Pharmacy
Harwinton Pharmacy, Inc. dba Harwinton Pharmacy, Inc.

Hassig Drugs, Inc. dba Hassig Drugs, Inc.
Hatch Drug of Mobridge, Inc. dba Hatch Drug and V&S Variety
Hawke's Pharmacy, Inc. dba Hawke's Pharmacy, Inc.
Hawkey's Inc. of Columbus Grove dba Hawkey Pharmacy
Hawkey's Pharmacy of Ottawa, Inc. dba Hawkey's Pharmacy
Hawkins Apothecaries, Inc. dba The Apothecary Shop #2
Haydel's Drug Store, Inc. dba Haydel's Drug Store
Hayes Pharmacy, Inc. dba Hayes Discount Pharmacy
Hays East Albany Pharmacy, Inc. dba Hayes East Albany Pharmacy
Hazlet Pharmacy Inc. dba Hazlet Pharmacy, Inc
Health Care of Cenla, Inc. dba Common Point Discount Pharmacy
Health Center Pharmacy, Inc. dba Health Center Pharmacy, Inc.
Health Enterprises, Inc. dba Total Life Care Pharmacies–Bell
Health Spectrum, Inc. dba Wonder Drug
Hebert Drugs of B.V., Inc. dba Hebert Drugs of B.V.
Hebert Drugs of M.C., Inc. dba Hebert Drugs of M.C.
Hebert's Superette, Inc. dba Heberts Discount Pharmacy
Hemingway Pharmacy, Inc. dba Hemingway Pharmacy
Herb's Pharmacy, Inc. dba Herb's Pharmacy
Herbert L. Burke, Inc dba Burke's Drug and Floral
Herbert's Pharmacy, Inc. dba Herbert's Pharmacy, Inc.
Herbison's Pharmacy, Inc. dba Herbison's Pharmacy
Herbst Apothecary, Inc. dba Herbst Apothecary
Hereford Pharmacy, Inc. dba Hereford's Pharmacy and Gift Shop
Heritage Pharmacy, Inc. dba Heritage Pharmacy
Hermitage Pharmacy, Inc. dba Hermitage Pharmacy, Inc.
Hettinger Drug, Inc. dba Hettinger Drug
Hi-Acres Pharmacy, Inc. dba Hi-Acres Pharmacy, Inc.
Hi-Way Drug Inc. dba Hi-Way Drug

Hick's Village Pharmacy, Inc. dba Hick's Village Pharmacy, Inc.
Hickmans Prescription Druggist, Inc. dba Hickmans Rexall Pharmacy
Highland Square Pharmacy Inc. dba Highland Square Pharmacy
Highlawn Pharmacy, Inc. dba Highlawn Pharmacy, Inc.
Hill's Apothecary, Inc. dba The Medicine Shoppe
Hillcrest Pharmacy Management, Inc. dba Hillcrest Drug & Gift
Hillcrest Pharmacy, Inc. dba Hillcrest Pharmacy
Hlller's Pharmacy, Inc dba Hiller's Pharmacy, Inc
Hinton Rx, Inc. dba Marsha's Health Mart
Hirons Drug, Inc dba Hirons Drug
Hirons, Inc. dba Hirons Everybody's Drug
Hobbs Pharmacy, Inc. dba Hobbs Pharmacy
Hockenberry Pharmacies, Inc. dba Hockenberry Leader Pharmacy
Hodgins Drug, Inc dba Clarkston Heights Pharmacy
Hodgson's Pharmacy, Inc. dba Hodgson's Pharmacy
Hodgson's Prescription Shop, Inc. dba The Prescription Shop
Hoey-Gibson Pharmacy, Inc. dba H & G Discount Pharmacy
Hoffman's Drug Store, Inc. dba Hoffman's Drug Store, Inc.
Hogan's Pharmacy, Inc. dba Hogan's Pharmacy
Holladay Pharmacy, Inc. dba Holladay Pharmacy
Hollingsworth Pharmacy, Inc. dba Hollingsworth Pharmacy
Hollywood Discount Pharmacy, Inc. dba Hollywood Discount Pharmacy
Holst Pharmacy, Inc. P.A. dba Holst Pharmacy, Inc-Tonganoxie
Holtzman Pharmacy, Inc. dba Holtzman Pharmacy, Inc.
Home Care Pharmacy, Inc. dba Home Care Pharmacy, Inc.
Home Convalescent Aids, Inc. dba Home Convalescent Aids, Inc.
Home I.V. Care, Inc. dba Option Care–Tulsa

Home Medical Systems, Inc dba Sentry Home Fusion
Hometown Pharmacy, Inc. dba Hometown Pharmacy
Hominy Rexall, Inc. dba Hominy Rexall, Inc.
Honey Creek Pharmacy, Inc. dba Honey Creek Pharmacy
Hopper Drug, Inc. dba Hopper Drug, Inc.
Horen's Drugstore, Inc. dba Horen's Drugstore
Horne's Central Drug Co., Inc. dba Horne's Central Drug Co.
Hornsby Drugs, Inc. dba Hornsby Drugs
Hornsby's Fullerton Drug, Inc. dba Hornsby's Fullerton Drug, Inc.
Hornsby's Myrtle Drug, Inc. dba Hornsby's Myrtle Drug, Inc.
Hornsby's Winston Drug, Inc. dba Hornsby's Winston Drug, Inc.
Horton's Drug Store, Inc. dba Horton's Drug Store
Hospital Pharmacy, Inc. dba Hospital Pharmacy
Hospital Thrift Pharmacy, Inc. dba Hospital Thrift Pharmacy
Howard Faust, Inc. dba Carl Schmidt Drug Co.
Howard H. Coplan, Inc. dba Drug City, Walmsley
Howard's Pharmacy, Inc. dba Howard's Pharmacy
Howard's Rexall Stores, Inc. dba Howard's Rexall
HP Ace, Inc. dba Ace Drug Mart West
HPB, Inc. dba Barney's Pharmacy
Hudacko's Pharmacy, Inc. dba Hudacko's Pharmacy, Inc.
Hudgins Pharmacy, Inc. dba Hudgins Pharmacy, Inc.
Hudson Bridge Pharmacy, Inc. dba Hudson Bridge Pharmacy
Hudson Pharmacy of Wichita, Inc. dba Hudson Pharmacy of Wichita, Inc.
Huff Brothers, Inc. dba Huff's Drug Store
Huff Pharmacy & Jewelry, Inc. dba Huff Pharmacy, Inc.
Hughes Pharmacy, Inc. dba Hughes Pharmacy
Humana Road Pharmacy, Inc. dba Humana Road Pharmacy
Hunter Pharmacy, Inc. dba Hunter Pharmacy

Hunter's Inc. dba Hunter's United Drug/Hunters Drug & Hardware
Hurst Discount Drug, Inc. dba Hurst Discount Drug, Inc.
Hutton Pharmacy #2, Inc. dba Hutton Pharmacy #2, Inc.
Hutton Pharmacy, Inc. dba Hutton Pharmacy, Inc.
I.D.S., Inc. dba Irvine Drug Store
Idaho United Drug, Inc. dba Idaho Drug, Inc.
Ideal Drugs, Inc. dba Ideal Drugs
Illiana Medicare Equip. & Supply, Inc. dba Gulick Pharmacy
Illingworth Pharmacy, Inc. dba Illingworth Pharmacy
Imrx, Inc dba The Medicine Shoppe
Independent Pharmacy Group, Inc. dba Bel-Park Pharmacy
Independent Pharmacy Management Corp. dba Manville Legend Pharmacy
Indian River Village Pharmacy, Inc. dba Indian River Village Pharmacy
Indopak, Inc. dba Santee Drug Center
Infu-Rx, Inc. dba Family Drug Center
Ingram Pharmacy, Inc. dba Ingram Pharmacy
Inola Drug, Inc. dba Inola Drug
Interdependent Holdings, Inc. dba McCabe Drug
Interlake Pharmacy, Inc. dba Interlake Pharmacy
International Drugs Inc dba International Drugs Inc
International Theraputic Services, Inc. dba Int'l Theraputic Svcs, Inc
Irwin's Pharmacy & Drug, Inc. dba Irwin's Pharmacy
J & B Company, Inc. dba Gipson & Cardin Drug
J & C Enterprises, Inc. dba Powell's Pharmacy and Powell's Northside Pharmacy
J & I Black, Inc dba Sutherlin Drug
J & J Drug Company, Inc. dba J & J Drug Company
J & J Drugs, Inc. dba Red River Drugs
J & J Pharmacy, Inc dba J & J Pharmacy
J & L Medical, Inc. dba Five Points Pharmacy
J & M Drug Co Inc dba Carol Stream Drugs
J & P Drugs, Inc. dba J & P Health Mart Drugs

J, L, & M Corporation dba Northgate Pharmacy
J. W. Tolley, Inc. dba Scottie Pharmacy of Christiansburg
J.D. Edwards, Inc. dba Edwards Pharmacy
J.M. Marchese Drugs, Inc. dba Leonard's Pharmacy
J.T.W., Inc. dba Milburn Pharmacy
J.W. Pharmacy, Inc. dba J & R Pharmacy
Jack A. Linder, Inc. dba Jack's Pharmacy
Jack P. Herick, Inc dba Glades Drugs
Jack West Pharmacy Services, Inc. dba The Pill Box
Jack's Pharmacy Inc dba Jack's Pharmacy
Jackson Discount Drugs, Inc. dba Mr. Discount Drugs #1
Jackson Drug Co., Inc. dba Jackson Drug Co., Inc.
Jackson Prescription Center, Inc. dba Prescription Center
Jackson T Ward—Successor In Interest Colonial Pharmacy, Inc. dba Colonial Pharmacy
Jackson T Ward—Successor In Interest Lee Davis Pharmacy, Inc. dba Lee Davis Pharmacy
Jacksonville Drug, Inc dba Jacksonville Drug, Inc
Jaglo Pharmacy, Inc. dba Rockville Centre Pharmacy
Jai's Apothecary Shop, Inc. dba Jai's Apothecary Shop, Inc. #2
Jamarc, Inc. dba Buckland Pharmacy
James Ellis, Inc. dba Ellis Pharmacy
James L. Auxier dba Clinic Pharmacy, Inc.
James Pharmacy, Inc dba James Pharmacy
James W. Garland, Inc. dba Robins Pharmacy
Jarrell's Pharmacy, Inc. dba Jarrell's Pharmacy, Inc.
Jarvis Pharmacy, Inc. dba Jarvis Pharmacy, Inc.
Jasper Drug Store, Inc. dba Jasper Drug Store
Jay Bee Drug Co., Inc. dba Jay Bee Drug Co.
Jay's Drugs, Inc. dba Jay's Drugs
Jayasudha, Inc. dba Carewell Pharmacy
Jayhawk Pharmacy Services, Inc. dba Jayhawk Pharmacy Services, Inc.
Jayhawk Pharmacy, Inc. dba Jayhawk Pharmacy, Inc.
JBJD, Inc. dba Jack Rixon's Pharmacy

Jefferson Drug Company, Inc. dba Jefferson Drug Company, Inc.
Jefferson Pharmacy, Inc. dba Jefferson Pharmacy, Inc.
Jim's Tower Pharmacy, Inc. dba Jim's Tower Pharmacy
Jiunta's Pharmacy, Inc. dba Jiunta's Pharmacy
Jo Dell's Drugs, Inc. dba Deer Drugs
Joe McCutchen's Health Services, Inc. dba Joe McCutchen's Health Services
Joe's Super Discount Drugs, Inc. dba Joe's Super Discount Drugs
John Bull Pharmacy, Inc. dba John Bull Pharmacy
John Dwonczyk, Inc. dba The Town Pharmacy
John Smith Professional Pharmacy, Inc dba John Smith Professional Pharmacy
Johns Creek Drug Center, Inc. dba Johns Creek Drug Center
Johnson Drug Company, Inc. dba Johnson Drug Company, Inc.
Johnson Pharmacies, Inc. dba Morton Medical Center Pharmacy
Johnson Rexall Drug, Inc. dba Johnson Rexall Drug
Johnsonville Prescription Center, Inc. dba Johnsonville Prescription Center
Johnston and Johnston, Inc. dba Colony Drug
Johnston Pharmacy, Inc dba Johnston Pharmacy
Joiner's Pharmacy, Inc. dba Joiner's Pharmacy
Jolley Drug, Inc. dba Jolley's Corner Pharmacy
Jollys Drug, In. dba Jollys Drug, Inc
Jones & Clayton Drug, Inc dba Clayton Pharmacy
Jones Low Priced Drugs, Inc. dba Jones Pharmacy I
Jordan's Pharmacy, Inc dba Jordan's Pharmacy
Joseph Gary Martin Corp. dba Econo Drug
Joyce-Armes Pharmacy, Inc. dba Main Street Pharmacy
Judy's Drug Store, Inc. dba Judy's Drug Store
Juneau and Company, Inc. dba Enterprise Pharmacy
Juniata Apothecary, Inc. dba Juniata Apothecary, Inc.
Justice Rexall Drug Store, Inc. dba Greenlawn Pharmacy

K & B, Inc. dba McHenry Drugs
K & S Drugs, Inc. dba K & S Drugs, Inc.
K Diamond Pharmacy Inc dba Dermer Pharmacy
K-C Pharmacy, Inc. dba K-C Pharmacy
K. A. Olsen, Inc. dba Olsen's Valu-Rite Drug
K. Hefner, Inc. dba Kurt's Prescription Center Pharmacy Kurt's Pharmacy
K. K. & R., Inc. dba A & H Pharmacy
K.H.D., Inc. dba Bountiful Professional Pharmacy
K.I. Pharmacy, Inc dba Kent Island Pharmacy
K.K.B, Inc. dba Kerr's Pharmacy
K.K.B. Corporation dba Boone County Drugs
Kane Drugs, Inc. dba Hancock Pharmacy
Kaufer Apothecary, Inc. dba Weber Drugs
Keller Pharmacy, Inc. dba Keller Pharmacy, Inc
Kelley-Ross Pharmacy, Inc. dba Kelley-Ross Pharmacy
Kelly Pharmacy, Inc. dba Kelly Pharmacy
Kemp's Pharmacy, Inc. dba Kemp's Pharmacy
Kempson Rexall Drugs, Inc. dba Kempson Rexall Drugs, Inc.
Kempsville Pharmacy of VA, Inc. dba Kempsville Pharmacy
Ken's Pharmacy, Inc. dba Ken's Pharmacy & Gifts
Kendall Healthmart Drug, Inc. dba Kendall Healthmart Drug
Kenstar Pharmacy, Inc. dba Kenstar Pharmacy, Inc.
Kenyon Pharmacies, Inc. dba Hood River Heights Pharmacy
Key Rexall Drug Corporation dba Key Drug
Keystone Drug, Inc dba Keystone Owl Rexall Drugs
Keystone Pharmacy, Inc. dba Keystone Pharmacy
Kiefer Corporation dba Zion Pharmacy
Kilgore Drugs, Inc. dba Kilgore Drugs
Kilmarnock Drug Co., Inc. dba Cardinal Discount Drug Center
Kimball Pharmacy, Inc. dba Kimball Pharmacy, Inc.
King George Pharmacy, Inc dba King George Pharmacy

King William Pharmacy, Inc. dba King William Pharmacy
King's Discount Drugs, Inc. dba King's Discount Drug
King's Georgetown Drugs, Inc. dba King's Georgetown Drugs
Kingman Drug, Inc. dba Kingman Health Mart
Kings Hillside, Inc. dba Kings Pharmacy
Kings Park Slope Pharmacy Inc. dba Kings Super Pharmacy
Kings Park Slope, Inc. dba B.R.B. Pharmacy, Inc.
Kinnard's Pharmacy, Inc. dba Kinnard's Pharmacy
Kirby's Family Pharmacy, Inc. dba Kirby's Family Pharmacy
Kirshenbaum Medical Supply Co., Inc. dba Kirshenbaum Medical Supply Co., Inc.
Klein's Pharmacy & Orthopedic Appliances, Inc. dba Klein's Pharmacy
Klingensmith's Drug Stores, Inc. dba Klingensmith's Drug Stores
KMK Pharmacy Enterprises, Inc. dba The Medicine Shoppe
Knightes Enterprises, Inc. dba Knightes V&S Pharmacy
Knoepfel & Miller Pharmacy, Inc dba Knoepfel & Miller Pharmacy
Kolbe Pharmacies, Inc. dba Hebron Pharmacy
Kornfield's Pharmacy Inc dba Kornfield's Pharmacy Inc
Krell Apothecary, Inc. dba North Campus Pharmacy
Kundrat Corporation dba The Prescription Shop
L & G Pharmacy, Inc dba Lillich's Pharmacy
L and N Enterprises, Inc. dba Corner Pharmacy
L.L.W. Inc. dba Park Avenue Pharmacy
L.M.K. Pharmaces, Inc dba Hendricks Pharmacy
La Jara Pharmaceutical Center, Inc dba La Jara Pharmaceutical Center, Inc
Lacey Drug Co., Inc. dba Lacey Drug Co.
Lacom, Inc. dba Phil's Discount Drug
Ladas Pharmacy, Inc. dba Ladas Pharmacy, Inc.
LaGrange Pharmacy, Inc. dba LaGrange Pharmacy
Lake Care Pharmacy dba Lake Care Pharmacy, Inc
Lake Harbin Pharmacy, Inc. dba Lake Harbin Pharmacy

Lake Hills Drug, Inc. dba Lake Hills Drug
Lake Pharmacy, Inc dba Lake Pharmacy
Lake Placid Drug Company, Inc. dba Lake Placid Drug Company, Inc.
Lake Shore Pharmacy, Inc. dba Lake Shore Pharmacy, Inc.
Lakeshore Pharmacy, Inc. dba Lakeshore Pharmacy
Lakeside Mercer Drug, Inc. dba Lakeside Mercer Drug
Lakeside Pharmacy, Inc. dba Lakeside Pharmacy, Inc.
Laketown Pharmacy, Inc. dba Laketown Pharmacy, Inc.
Lam's Pharmacy, Inc. dba Lams Pharmacy, Inc
Lamar's Pharmacy, Inc. dba Plaza Pharmacy
Lambdin Family Drugs, Inc. dba Lambdin Family Drugs
Lambert Pharmacy, Inc. dba Lambert Pharmacy
Landry's Pharmacy, Inc. dba Landry's Healthmart Pharmacy
Lanes Drug Store, Inc. dba Lanes Drug Store, Inc.
Langhorne Drug Store, Inc. dba Langhorne Drug Store, Inc.
Langley Pharmacy Management, Inc. dba Langley Drug
Langwin's Pharmacy, Inc. dba Langwin's Pharmacy, Inc.
Lanier & Register Pharmacy, Inc. dba Wainwright's Pharmacy
Lanier Pharmacy, Inc. dba Lanier Pharmacy
Laporte Apothecary, Inc. dba Laporte Apothecary
Larke Drugs Inc dba 110 Pharmacy & Surgical
Larmour's Drug Co., Inc. dba Larmour's Drug Co., Inc.
Larroque Pharmacy, Inc. dba Larroque Pharmacy
Larry's Pharmacy of Sulphur, Inc. dba Larry's Healthmart
Larry's Pharmacy, Inc. dba Formerly Spear's Drug
Larson's Prescription Pharmacy Inc. dba Larson's Pharmacy
Lawrence Park Apothecary, Inc. dba Lawrence Park Apothecary, Inc.
Lawson's Pharmacy, Inc. dba Lawson's Pharmacy
Lawton Pharmacy, Inc dba Lawton Pharmacy
Leas Drug Store, Inc. dba Leas Drug Store, Inc.
Lee & Pickels Drug Store, Inc. dba Lee & Pickels Drug Store

Lee N. Johnston, Inc. dba The Medicine Shoppe
Lee's Prescription Shops, Inc. dba Lee's Rx Pharmacies
Leekers Family Foods, Inc. dba Leekers Family Pharmacy
Leesburg Pharmacy, Inc. dba Leesburg Pharmacy, Inc.
Leesville Drug Co., Inc. dba Thrifty Way Pharmacy No. 3
Leissner Enterprises, Inc. dba Victoria Pharmacy
Leonard L. Edloe Corporation dba Edloe's Professional Pharmacy
Lewil Pharmacy, Inc. dba Lewil Pharmacy
Lewis Drugs, Inc. dba Lewis Drug Eastgate
Lewisburg Discount Drugs, Inc. dba Lewisburg Discount Drugs, Inc.
Lexington Pharmacal, Inc. dba Bierer's Pharmacy
Lexington Pharmacy, Inc. dba Skrip Shoppe Pharmacy
Libertytown Pharmacy, Inc dba Libertytown Pharmacy
Liebe Drug, Inc. dba Liebe Drug
Lifestar Medical, Inc. dba The Medicine Shoppe #963
Ligonier Pharmacy, Inc. dba Ligonier Pharmacy, Inc.
Lincoln County Pharmacy, Inc. dba Lincoln County United Drug
Lincoln Drugs, Inc. dba Keever Pharmacy
Lincoln Park Pharmacy, Inc. dba Lincoln Park Pharmacy
Lincoln Trail Pharmacy, Inc. dba Lincoln Trail Pharmacy, Inc.
Link Brothers Pharmacy, Inc. dba Link Brothers Pharmacy, Inc.
Lippert Enterprises, Inc dba Evans Drug Stores #2
Lithonia Economy Drug, Inc. dba Lithonia Economy Drug
Little Darby Inc. dba Little Darby Pharmacy
Little Five Points Pharmacy, Inc. dba Little Five Points Pharmacy
Little Town Pharmacy, Inc. dba Little Town Pharmacy
Lively Drug Co., Inc. dba Lively Drug Co., Inc.
LJB, Inc. dba Jeff's Prescription Shop
Lloyd's Drug, Inc. dba Lloyd's Drug, Inc.
Long Drugs of Columbia, Inc. dba Cornell Arms Pharmacy

Long's Drugs of South Carolina, Inc. dba Long's Kilbourne Drugs, Long's Millwood Drugs, and Longe Drugs 1, Inc. dba Longe Drugs
Longenecker Pharmacy, Inc. dba Longenecker Pharmacy, Inc.
Longview Apothecaries, Inc. dba Medical Arts Apothecary
Looks Issaquah Pharmacy, Inc dba Look's Pharmacy
Looks Mercer Island Pharmacy, Inc. dba Looks Mercer Island Pharmacy
Lopez Island Pharmacy, Inc. dba Lopez Island Pharmacy, Inc.
Loraul Pharmaceutics, Inc. dba Alberty Drugs
Lost River Pharmacy, Inc. dba Lost River Drug
Loughran's Pharmacy, Inc. dba Loughran's Pharmacy, Inc.
Love Unlimited Pharmacy Inc dba Love Unlimited Pharmacy Inc.
Low Cost Rx, Inc. dba Low Cost Rx
Loye's Pharmacy, Inc. dba Loye's Pharmacy
LRL, Inc. dba Thrifty Way Pharmacy #22
Ludlow Pharmacy, Inc. dba Ludlow Drugs
Luke's Pharmacy, Inc. dba Luke's Pharmacy
Lunceford Pharmacy, Inc. dba Lunceford Pharmacy
Lupariello's Drug Store, Inc. dba Lupe's Drug Store #2
Lupe's Drug Store #3, Inc. dba Lupe's Drug Store #3, Inc.
Lykins Pharmacy, Inc dba Lykins Pharmacy, Inc
Lyman Sargents Pharmacy of Evanston, Inc. dba Lyman Sargents Pharmacy of Evanston, Inc.
Lynch Drug Company, Inc. dba Lynch Drug Company
Lyon Drug Store, Inc. dba Lyon Drug Store, Inc.
Lyon Park Pharmacy Inc dba Lyon Park Pharmacy Inc
Lyons Pharmacy, Inc. dba Formerly Lyons Pharmacy
M & D Drug Company, Inc. dba M & D Drug Co.
M & I Pharmacy, Inc. dba M & I Pharmacy, Inc.
M & L Pharmacy, Inc. dba Belmont Drugs & Surgical
M & M Drugs, Inc. dba M & M Drugstore
M & S Pharmacy, Inc dba M & S Pharmacy
M.D. Co., Inc. dba M.D. Co., Inc.

M. Graeff's Eastside Drugs, Inc. dba Mike's Eastside Drugs
M. L. Porter Corp. dba Medicine Shoppe
M. Timberlakes, Inc. dba Timberlakes Drug Store
M.D.C. Drug, Inc. dba Redwood Drug and Surgical Supply
M.E. Cole Drug Co., Inc. dba Claxton-Cole Pharmacy
M.J., Inc dba Airport Pharmacy
M.K.M. Drugs, Inc. dba MKM Drugs
Mac's Drug Store, Inc. dba Mac's Drug Store, Inc.
Mac's Drugs, Inc. dba Mac's Drugs, Inc.
Mack Pharmacy, Inc. dba Mack Pharmacy, Inc.
Mackey's Pharmacy, Inc. dba Mackey's Pharmacy, Inc.
Mackinaw Village Pharmacy, Inc. dba Village Pharmacy
Maddox Pharmacy, Inc. dba Ward Drug Co.
Madison Drug and Jewelry, Inc. dba Madison Drug Emporium
Madras Thriftwise Drug, Inc. dba Roger's Drug
Magle Drug Corp. dba Perry Drugs
Magnolia Pharmacy, Inc. dba Magnolia Pharmacy, Inc.
Mahanna Pharmacy, Inc. dba Mahanna Pharmacy, Inc.
Main Street Pharmacy, Inc. dba Haney's Pharmacy
Mainland Pharmacy, Inc. dba Mainland Pharmacy
Maitland Drug Store, Inc. dba Maitland Rexall Drugs
Majeste St. Claude Pharmacy, Inc. dba Majeste Pharmacy
Major Medical, Inc. dba Center Pharmacy
Mall Pharmacy, Inc. dba Mall Pharmacy, Inc.
Mallea-Reddish, Inc. dba Mallea & Reddish Pharmacy
Malone Drugs, Inc. dba Malone Drugs, Inc.
Manassas Pharmacy, Inc. dba Manassas Pharmacy, Inc.
Manchester Pharmacy, Inc dba Manchester Pharmacy
Manhattan Pharmacy, Inc. dba Manhattan Pharmacy
Mansfield Apothecary, Inc. dba Mansfeld Apothecary
Maple Avenue Pharmacy, Inc. dba Maple Avenue Pharmacy
Maple Pharmacy, Inc. dba Maple Pharmacy, Inc.
Marando, Inc. dba Fireside Pharmacy
Marc Drug Co., Inc. dba Bettman Pharmacy
Marcantel's Pollock Pharmacy, Inc. dba Marcantel's Pollock Pharmacy, Inc.

Marco Discount Drugs, Inc. dba Marco Discount Drugs, Inc.
Marietta Discount Pharmacy, Inc. dba Marietta Discount Pharmacy, Inc.
Marion Pharmacy, Inc. dba Marion Pharmacy
Mark's Family Pharmacy, Inc. dba Mark's Family Pharmacy
Mark-It Pharmacy, Inc. dba Medical Center Pharmacy
Market Square Pharmacy, Inc. dba Market Square Pharmacy
Marlowe's Drug, Inc. dba Marlowe's Pharmacy
Marpal Drugs, Inc. dba New Chelsea Drug
Marshall Pharmacies, Inc. dba Medical Arts Pharmacy East and West
Marshall's Drug Store, Inc. dba Marshall's Drug Store
Marswel, Inc. dba Kriger Drug Store
Martin Prescription Center, Inc. dba Martin Prescription Center, Inc.
Martin's Drug Store, Inc. dba Martin's Drug Store, Inc.
Martin's Pharmacy, Inc. dba Martin's Pharmacy
Marto Drug & Supply Co., Inc. dba Physician's Pharmacy
Martz & Shapley Pharmacy, Inc. dba Martz & Shapley Pharmacy, Inc.
Maryville Pharmacy Ceretto's Inc. dba Maryville Pharmacy
Matte's Pharmacy, Inc. dba Matte's Pharmacy
Mattowler Inc dba Dillwyn Pharmacy
Mc Rae, Inc. dba Mc Rae's Drug Store
McBee, Inc. dba City 2 Pharmacy
McCaysville Drug Center, Inc. dba McCaysville Drug Center
McCorkle's Pharmacy, Inc. dba McCorkle's Pharmacy
McCracken Pharmacy, Inc. dba McCracken Pharmacy, Inc.
McDaniel Pharmacy, Inc. dba McDaniel Pharmacy
McDonald's Pharmacy, Inc. dba The Medicine Shoppe
McElroy Pharmacy, Inc. dba McElroy Pharmacy, Inc.
McGuffie Drugs, Inc. dba McGuffie Drug Store
McIntosh Pharmacy, Inc. dba McIntosh Pharmacy

McMahan Pharmacy, Inc. dba McMahan Pharmacy
MCP, Inc. dba Higgers Drugs
MDC, Inc. dba Deriso Drugs
MDJ, Inc. dba Beyer's Pharmacy
MDS, Inc. dba Professional Pharmacy
Meadowbrook Health Services, Inc. dba Meadowbrook Pharmacy
Mechanicsville Drug Store, Inc. dba Mechanicsville Drug Store, Inc.
Med-S, Inc. dba The Medicine Shoppe
Med-World Pharmacy, Inc. dba Med-World Pharmacy, Inc.
Medi-Mart, Inc. dba Medi-Mart Pharmacy
Medi-RX Pharmacy, Inc. dba Medi-RX Pharmacy, Inc.
Medi-Save Pharmacy, Inc. dba Medi-Save Pharmacy
Medi-Serv, Inc. dba Medical Service Pharmacy
Medi-Thrift, Inc. dba Medi-Thrift
Medi-Value Pharmacy, Inc dba Medi-Value Pharmacy
Medic Pharmacy, Inc. dba Medic Pharmacy #2
Medical Arts Pharmacy of Lenoir, Inc. dba Medical Arts Pharmacy of Lenoir, Inc.
Medical Arts Pharmacy, Inc dba Medical Arts Pharmacy, Inc
Medical Arts Supply, Inc. dba Medical Arts Pharmacy
Medical Building Pharmacy, Inc dba Alpine Professional Pharmacy
Medical Center Pharmacy of Many, LA, Inc. dba Medical Center Pharmacy
Medical Court Pharmacy, Inc. dba Medical Court Pharmacy
Medical Park Pharmacy, Inc. dba Medical Park Pharmacy
Medical Plaza Pharmacy, Inc. dba City Rexall Drugs
Medical Village Pharmacy, Inc dba Medical Village Pharmacy, Inc
Medicap of Toledo, Inc dba Medicap Pharmacy of Toledo
Medicine Man Pharmacy, Inc dba Medicine Man Pharmacy, Inc.
Medicine Man, Inc. dba Medicine Man, Inc. #1
Medicine North Pharmacy, Inc. dba Medicine Man North Pharmacy, Inc.

Medicine Wagon, Inc. dba Reams Pharmacy #3
Medicine World, Inc. dba Medicine World
Medicines of Hackensack, Inc. dba The Medicine Shoppe
Medicorp, Inc. dba Parkway Pharmacy & Sundries
Medics Drug Mart, Inc. dba Medics Drug Mart
Medisave, Inc. dba Medicap Pharmacy
Mega Professional Pharmacy Corp dba Mega Pharmacy
Meister, Inc. dba Kombo Pharmacy
Melancon Pharmacy, Inc. dba Melancon Pharmacy
Melbran Pharmacy Inc dba Melbran Pharmacy
Melville-Whitman Pharmacy, Inc. dba Melville Pharmacy
Melvin Chaplin Inc dba Mel's Pharmacy
Menlo Park Hallmark Pharmacy, Inc. dba Menlo Park Pharmacy, Inc
Meredith Health Corporation dba Rinehart's Pharmacy
Meridian Pharmacy Management, Inc. dba Medic Pharmacy at Quail Park
Merriam Drug Co., Inc. dba The Medicine Shoppe
Mestayer Drug Co., Inc. dba Taylors Drug Store
Metcalf's Drug Store Inc dba Metcalf's Drug Store
Metropolitan Pharmacy II, Inc. dba Metro Pharmacy II
Metropolitan Pharmacy, Inc. dba Metropolitan Pharmacy
MGM Pharmacy, Inc. dba MGM Pharmacy, Inc.
Miami County Drugs Inc dba The Medicine Shoppe
Micro Pharm Inc. dba Cramerton Drug
Mid-Town Pharmacy, Inc. dba Mid-Town Pharmacy
Middlebury Pharmacy, Inc. dba Middlebury Pharmacy, Inc.
Midlands Pharmacies, Inc. dba The Medicine Shoppe
Midlothian Apothecary, Inc. dba Midlothian Apothecary
Mikhitarian Pharmacy, Inc. dba Mikhitarian Pharmacy
Miles Pharmacy, Inc. dba Miles Pharmacy
Mill Creek Pharmacy, Inc. dba Mill Creek Pharmacy
Milledgeville Medical Center Inc dba Medical Center Pharmacy
Miller Drug Company, Inc. dba Clinic Pharmacy
Miller Drugs, Inc. dba Miller Drugs
Miller Medical & Respiratory, Inc. dba Miller's Pharmacy

Miller Place Drug Store Inc dba Miller Place Drug Store
Millersburg Pharmacy, Inc. dba Dal-Hern Pharmacy
Millikan Pharmacy, Inc. dba Millikan Pharmacy, Inc.
Mills Cashway Pharmacy, Inc. dba Mills Cashway Pharmacy
Mills Drug Co., Inc. dba Millen Pharmacy
Mills Pharmacy, Inc. dba Mills Pharmacy, Inc.
Millsboro Pharmacy, Inc., dba Millsboro Pharmacy
Mims Pharmacy, Inc. dba Mims Pharmacy
Mincy's Pharmacy, Inc. dba Mincy's Pharmacy, Inc.
Minford Pharmacy, Inc. dba Minford Pharmacy
Minnich's Pharmacy, Inc. dba Minnich's Colonial Pharmacy
Misener Pharmacy, Inc. dba Misener Pharmacy, Inc.
Missoula Clinic Pharmacy, Inc dba Missoula Clinic Pharmacy
Mitchell & Mitchell Enterprises, Inc. dba Walker Drug
Mitchell's Pharmacy, Inc. dba Mitchell's Pharmacy
Mitchum Drug Co., Inc. dba Mitchum Drug Co., Inc.
MJC, Inc. dba Bolt Drugs
Mobley Drugs, Inc. dba Mobley Drugs, Inc.
Model Pharmacy Inc dba Model Pharmacy Inc
Moden-Giroux, Inc. dba Middleport Family Health Center
Modern Medical Pharmacy, Inc. dba Modern Medical Pharmacy, Inc.
Modern Medical Services, Inc. dba Modern Pharmacy
Modern Pharmacy, Inc. dba Modern Pharmacy
Mon-Oc, Inc. dba Ramtown Pharmacy
Monmouth Beach Pharmacy, Inc. dba Monmouth Beach Pharmacy
Monroe Drug Company, Inc. dba Monroe Drug Company
Monroe Park Pharmacy, Inc. dba Monroe Park Pharmacy, Inc.
Monroe Pharmacy, Inc. dba Monroe Pharmacy
Montgomery Drug Co., Inc. dba Adams Drugs #1 South
Montgomery Drug Company Inc dba Adams Drugs #3
Moon's Pharmacy, Inc. dba Moon's Pharmacy

Moore Drug, Inc. dba Moore Drug Store
Moore Pharmacy, Inc. dba Moore Pharmacy, Inc.
Moore Rexall Drug, Inc. dba Moore Rexall Drug
Moore's Pharmacy, Inc. dba Moore's Pharmacy, Inc.
Moose Drug Company, Inc. dba Moose Drug Company, Inc.
Morgan & Thomas, Inc. dba Morgan & Thomas, Inc.
Morr-Fitz, Inc. dba Fitzgerald Pharmacy
Morris Drug Co., Inc. dba Morris Drug Co.
Mortar & Pestle, Inc. dba The Medicine Shoppe
Moseley Drug Co., Inc. dba Moseley Drug Co.
Mosley Pharmacy, Inc. dba Ideal Pharmacy
Moss Pharmacy, Inc. dba Moss Pharmacy
Mountain View Pharmacy, Inc. dba Mountain View Pharmacy
Moye's Pharmacy, Inc. dba Moye's Pharmacy and Home Health
Mr Discount Drugs, Inc dba Mr Discount Drugs, Inc
Mr. Discount Drugs of South Jackson, Inc. dba Mr. Discount Drugs #2
Mr. Lucky Enterprises, Inc. dba Sidie Pharmacy
Mr. Prescription Incorporated dba Mr. Prescription #1
Mullins Crestwood Drugs, Inc. dba Mullins Drugs
Mulvane Pharmacy, Inc. dba Mulvane Pharmacy, Inc.
Murray Clinic Pharmacy, Inc. dba Clinic Pharmacy of Murray
Murray Drug Company, Inc. dba Acme Pharmacy
Mustang Drug, Inc. dba Mustang Drug
Mustang Pharmacy Management, Inc. dba Medic Pharmacy fmrly dba Super Thrift Pharmacy
Mutual Drug Inc dba Mutual Drug Inc
My Pharmacy of Bird Road, Inc. dba Allen's, Coral Gables
My Pharmacy of Homestead, Inc. dba Royal Palm, Homestead
My Pharmacy, Inc. dba My Pharmacy of Coral Reef
Myers Drug Stores, Inc. dba Myers Drug Store #1
Myrnmart Drug Corp. dba Edwards Drugs

McDowell Professional Pharmacy, Inc. dba McDowell Professional Pharmacy, Inc.
McGee's Prescription Shop, Inc. dba McGee's Prescription Shop, Inc.
McKendree, Inc. dba Roy's Discount Pharmacy
McLean Drug, Inc. dba McLean Drug, Inc. (McLean Home Care Equipment SVC)
McMinnville Drug Center, Inc. dba McMinnville Drug Center, Inc.
McMullen Drug, Inc. dba McMullen Drug
Nagem's Thrifty Way Pharmacy, Inc. dba Nagem's Thrifty Way Pharmacy
Nambe Drugs, Inc. dba Nambe Drugs
Nan-Dee Enterprises, Inc. dba Community Drug of Benzonia
Nash Drugs, Inc dba Nash Drugs, Inc
National Pharmacies, Inc. dba Medicine Man, Inc. (Medicine Man #5)
Navda Pharmacy, Inc. dba East-Point Pharmacy
Ndola Pharmacy Corp. dba Aldelphi Drugs
Neel's Pharmacy, Inc. dba Strickland's Pharmacy
Neffsville Pharmacy, Inc. dba Neffsville Pharmacy
Neil's Pharmacy, Inc. dba Neil's Pharmacy
Nelson Drugs, Inc. dba Reynolds Drugs
Nelson's Pharmacy, Inc. dba Nelson's Pharmacy, Inc.
Nethercote Industries, Inc. dba Jewett City Pharmacy
Neuman's Pharmacy Inc dba Neuman's Pharmacy Inc.
New Drug Co., Inc. dba New Drug Co
New Hyde Park Pharmacy, Inc. dba Lakeville Pharmacy
New Plains Pharmacy, Inc. dba Plains Pharmacy
New World Pharmacy, Inc. dba New World Pharmacy, Inc.
Newhard Pharmacy, Inc. dba Newhard Pharmacy, Inc.
Newport Hills Drugs, Inc. dba Newport Hills Drugs
Newtown Drug Co., Inc. dba Newtown Pharmacy
Nicholas Pharmacy, Inc. dba Nicholas Pharmacy, Inc.
Nichols Pharmacy, Inc. dba Nichols Pharmacy
Nicholson's Sumner Pharmacy, Inc. dba Bonney Lake Pharmacy

Nielson's Pharmacy, Inc. dba Boyd's Family Pharmacy
Noland's Pharmacy, Inc. dba Noland's Pharmacy
Nolte's Pharmacy Inc. dba Nolte's Pharmacy
Norbet, Inc. dba Ernie's Pharmacy
Norman Drug Co., Inc. dba Norman Drug Co.
Norris Drugs, Inc. dba Norris Drugs
North Broad Pharmacy, Inc. dba North Broad Pharmacy, Inc.
North Douglas Economy Drug, Inc. dba North Douglas Economy Drug, Inc.
North Fulton Apothecary, Inc. (Misfiled as CRC) dba North Fulton Apothecary
North Georgia Pharmaceutics, Inc. dba Family Pharmacy
North Pines Pharmacy, Inc. dba The Medicine Shoppe
North Pole Pres. Labor Inc dba North Pole Pres. Laboratory
Northern Pharmacy, Inc. dba Northern Pharmacy
Northfork Pharmacy, Inc. dba Northfork Pharmacy, Inc.
Northpark Pharmacy, Inc. dba Northpark Pharmacy
Northside Pharmacy, Inc. dba Northside Pharmacy, Inc.
Northtowne Pharmacy, Inc. dba Northtowne Pharmacy
Northway, Inc. dba Towne Center Pharmacy
Notre Dame Pharmacy, Inc. dba Notre Dame Pharmacy
NRF, Inc. dba Couch Pharmacy on Sheridan
NTA, Ltd Corp dba Bowling Green Pharmacy
Nuckolls Drug Co., Inc. dba Nuckolls Drug Co.
Nugget Saver, Inc dba Dillon Drug
O & B, Inc. dba Westbury Apothecary
O'Connor Pharmacy, Inc. dba O'Connor Pharmacy, Inc.
O'Neil Healthcare, Inc. dba Winchester Pharmacy
O'Steen's Sherwood Pharmacy, Inc. dba O'Steen's Sherwood Pharmacy
Oak Cliff Pharmacy, Inc. dba Oak Cliff Pharmacy
Oak Tree at Marlboro, Inc. dba Marlboro Mall Pharmacy
Oak Tree Drugs Corp. dba Oak Tree Drugs Corp.
Oatts Drug Company, Inc. dba Oatts Drug Company
Ocilla Pharmacy, Inc. dba Ocilla Pharmacy
Okemah Pharmacy, Inc. dba Okemah Pharmacy

Old Baltimore Pike Apothecary, Inc. dba Southern Chester County Pharmacy
Old North State Drug Co., Inc. dba Lexington Drug Co.
Olde Towne Pharmacy, Inc. dba Olde Towne Pharmacy
Olden's Pharmacy, Inc. dba Olden's Pharmacy
Olegna, Inc. dba Bay View Pharmacy
Olson Plaza Pharmacy Inc dba Olson Plaza Pharmacy
Olympic Drug, Inc. dba Olympic Drug
Olympic Drugs, Inc. dba Olympic Drugs
One Moore Drugs, Inc. dba Medical Arts Pharmacy
Orlando Pharmacy, Inc. dba Orlando Pharmacy, Inc.
Osburn Drug, Inc. dba Osburn Drug
Ossi Apothecary, Inc dba Ossi's Apothecary
Ossi's Apothecary, Inc. dba Ossi's Apothecary, Inc.
Ostrander's Drug, Inc. dba Ostrander's Drug
Othello Drug, Inc. dba Othello Drug Company
Owen's Pharmacy, Inc. dba Owen's Pharmacy, Inc.
Owingsville Drugs, Inc. dba Owingsville Drugs, Inc.
Owl Drug, Inc. dba Owl Drug
P & H Discount Pharmacy, Inc. dba P & H Discount Pharmacy, Inc.
P & N Corp dba Fabian Drug
P & S Pharmacy, Inc. dba U-Save Discount Drugs
P-K, Inc dba P-K Pharmacy
P.H. Pharmacists, Inc. dba Boro Hall Pharmacy
P.I.C. Corporation dba Family Discount Drugs
Paco Surgical, Inc. dba Galt Pharmacy
Palm Springs Village Pharmacy, Inc. dba Palm Springs Village Pharmacy
Palmer Drug Co., Inc. dba Palmer Drug Co.
Palmetto Pharmacy, Inc. dba Palmetto Pharmacy
Pamplico Pharmacy, Inc. dba Pamplico Pharmacy, Inc.
Panacea Partners, Inc. dba Peachtree City Pharmacy
Panama Pharmacy, Inc. dba Beach City Drug
Paolello Pharmacy, Inc. dba Paolello Pharmacy, Inc.
Paoli Pharmacy, Inc. dba Paoli Center Pharmacy
Para-Pharm, Inc. dba Medical Pharmacy

Paramount Drug Co. Inc. dba Paramount Drug Co.
Paris Clinic Pharmacy, Inc. dba Paris Clinic Pharmacy
Park Shore Drug, Inc. dba Park Shore Pharmacy
Parker Drug Co., Inc. dba Parker Drug Company
Parkin's Pharmacy, Inc. dba Parkin's Pharmacy/Parkin's
Parkin's West End Pharmacy, Inc. dba Medistat Pharmacy No. 1
Parkmor Drug, Inc. dba Park Pharmacy
Parksley Drug Company, Inc. dba Parksley Drug Company, Inc.
Parkville Drug Co. Inc. dba Edwards & Anthony Pharmacy
Parkway Drugs, Inc. dba Parkway Drugs, Inc.
Parkwood-Street Road Pharmacy, Inc. dba Parkwood-Street Road Pharmacy
Parmet, Inc. dba Metcalfe Rexall Drugs
Parrino Pharmacy, Inc. dba Parrino Pharmacy, Inc.
Parrish Pharmacy, Inc. dba Parrish Pharmacy, Inc.
Partridge's Prescription, Inc. dba The Medicine Cabinet
Pat Fitzgerald, Inc. dba Fitzgerald Pharmacy
Patton Pharmacy, Inc. dba Patton Pharmacy
Paul Discount Drugs, Inc. dba Paul Discount Drugs
Paul G. Snyder, Inc dba Chatsworth Pharmacy
Paul J. Ruwe, Inc. dba Paul's Pharmacy
Paulding Pharmacy, Inc. dba Paulding Pharmacy
Paxon Prescription Center, Inc. dba O'Steen's Pharmacy
Pay Less Prescriptions, Inc. dba Payless Prescriptions
Peachtree Pharmacy, Inc. dba Peachtree Pharmacy
Pearman Pharmacy, Inc. dba Pearman Pharmacy, Inc.
Pearson Enterprises, Inc. dba Pearson Drugs
Peckenpaugh Drug Company, Inc. dba Peckenpaugh Drug Company
Pecos Street Pharmacy, Inc. dba Medical Arts Pharmacy
Pederson Pharmacy, Inc dba Dave's Pharmacy
Pelnar Pharmacy, Inc. dba The Infant Jesus Medical Center Pharmacy
Pelta Drug, Inc. dba Highland Pharmacy
Pelton's Inc dba Pelton's Drug Stores

Pembroke Hometown Pharmacy, Inc. dba Pembroke Hometown Pharmacy
Pembroke Pharmacy, Inc. dba Pembroke Pharmacy
Pendergraft Drugs, Inc. dba Professional Discount Pharmacy
Penn-Dol Pharmacy, Inc. dba Penn-Dol Pharmacy
Pennsport Pharmacy, Inc. dba Pennsport Pharmacy, Inc.
Penny Wise Drug Stores, Inc. dba Penny Wise Drug Store
Penrose Place Pharmacy, Inc. dba Penrose Place Pharmacy, Inc.
People's Drugs and Gifts, Inc. dba People's Drugs and Gifts
Pepe's Drug Store, Inc. dba Pepe's Drug Store
Perine Enterprises, Inc. dba Doug's Healthmart Pharmacy
Perkins Drug, Inc. dba Perkins Drug
Perkins Pharmacy, Inc. dba Perkins Pharmacy, Inc.
Perry Pharmacy, Inc. dba Perry Pharmacy, Inc.
Persich Drugs, Inc. dba Persich Drugs
Petal Drug Co., Inc. dba Petal Drug Co., Inc.
Peters Creek Pharmacy, Inc. dba Peters Creek Pharmacy, Inc.
Peterson Drug Store, Inc. dba Peterson Drug Store, Inc.
Petranek-Mansglia Drug Co., Inc. dba Petranek's Pharmacy
Peyton's Pharmacy, Inc. dba Peyton's Pharmacy, Inc.
Pfeffer's Pharmacy & Gift Shop, Inc. dba Pfeffer's Pharmacy & Gift Shop, Inc.
Pharma-Rx Northwest, Inc. dba Lloyd Center Pharmacy
Pharmaceutical Buyers, Inc. dba Pharmaceutical Buyers, Inc.
Pharmaceutical Specialities, Inc. dba Pharmaceutical Specialities, Inc.
Pharmacist Group Services, Inc. dba Spencer-Tyson Pharmacy
Pharmacpo 2, Inc. dba Medicap Pharmacy
Pharmacy Consultants, Inc dba Sun Family Drug Center
Pharmacy Group, Inc. dba Moye's Pharmacy and Home Health Care
Pharmacy Management, Inc. dba Lowen's Pharmacy

Pharmacy Services, Inc. dba Larry's Pharmacy
Pharmacy Shop, Inc. dba Ed Snell's Pharmacy Shop
Pharmacy Value, Inc. dba Pharmacy Value, Inc.
Pharmco Enterprise Inc dba Katsins Pharmacy
Phil-Ra, Inc. dba Beniot Vitalcare
Phillips Drugs Inc dba Phillips Pharmacy
Phillipsburg Pharmacy, Inc. dba Phillipsburg Pharmacy, Inc.
Philmar Pharmacy Inc dba Philmar Pharmacy
Phoenix Pharmacy, Inc. dba Phoenix Pharmacy, Inc.
Phoenix Rexall Drugs, Inc. dba Phoenix Health Mart Drug
Physicians and Surgeons Pharmacy, Inc. dba Physicians and Surgeons Pharmacy
Pickett's Clinic Pharmacy, Inc. dba Clinic Pharmacy
Picou's Drug Store, Inc. dba Picou's Drug Store
Piedmont Medical, Inc. dba Smith Pharmacy
Pierce Drugs, Inc. dba Pierce Drugs, Inc.
Pilgrim Pharmacy, Inc. dba Pilgrim Pharmacy
Pillbox Pharmacy, Inc. dba Medic Pharmacy, Inc.
Piller, Inc. dba Medicine Shoppe
Pine Drug, Inc. dba Aloha Pharmacy
Pine Mountain Pharmacy, Inc. dba Pine Mountain Pharmacy
Pine Pharmacy Home Care Products Center, Inc. dba Pine Pharmacy and Home Care Center
Pineview Pharmacy, Inc. dba Pineview Pharmacy
Pinkston's Drug Store, Inc. dba Guy's Drug Store
Pioneer Enterprises, Inc. dba Gene's Pharmacy
Pioneer Prescription Shoppe, Inc. dba Batten's Prescription Shoppe
Pipitone Ethical Pharmacy, Inc. dba Pipitone Ethical Pharmacy, Inc.
PJL, Inc. dba Lech's Pharmacy
Plaza Discount Pharmacy, Inc. dba Plaza Discount Pharmacy
Plaza Pharmacy, Inc. dba Plaza Pharmacy, Inc.
Plazmont Pharmacy, Inc. dba Kaufman Pharmacy

Plunkett's Drug Store of Pelham, Inc. dba Pelham Pharmacy
Plymouth Drug Co., Inc. dba Plymouth Drug Co., Inc.
Pompano Pharmacy, Inc. dba Pompano Pharmacy
Ponchatoula Pharmacy, Inc. dba Ponchatoula Pharmacy
Poponea's Pharmacy of Waterford, Inc. dba Poponea's Pharmacy, Inc.
Porter Business Associates, Inc. dba Professional Discount Pharmacy
Porter Drug, Inc. dba Porters Village Rx
Porter Drugs, Inc. dba Porter Drug
Portis Pharmacy, Inc. dba Portis Pharmacy, Inc.
Potomac Valley Pharmacy, Inc dba Potomac Valley Pharmacy
Pottstown UPC, Inc. dba Downtown Prescription Center
Powell Drug, Inc. dba Powell Drug
Powell Pharmacy, Inc. dba Powell Pharmacy, Inc.
Powhatan Pharmacy, Inc. dba Powhatan Pharmacy, Inc.
PPG Script, Inc. dba Rx Xpress
Prater Drugs, Inc. dba Frazier's Prater Drugs
Pratt's Rexall Drugs, Inc. dba Pratt's Pharmacy
Preble Enterprises, Inc. dba Stapleton Drug Store
Prescription Center Pharmacy, Inc. dba Prescription Center Pharmacy
Prescription Center, Inc. dba Prescription Center, Inc.
Prescription Services, Ltd., Inc. dba The Pharmacy Counter
Prescription Shoppe of Georgetown, South Carolina, Inc. dba Prescription Shoppe of Georgetown, South Carolina, Inc.
Prescription Shoppe of Pamplico, Inc. dba Prescription Shoppe
Prescriptions, Etc., Inc. dba Bellegrove Pharmacy
Prescriptions, Inc. dba Prescriptions, Inc.
Preston Drug, Inc. dba Preston Drug
Price Drug Co., Inc dba Price Drug Co
Prince George Pharmacy, Inc. dba Prince George Pharmacy
Prince Professional Pharmacy, Inc dba JB Pharmacy

PRN Pharmaceuticals, Inc. dba Kenmore Rx Center
Procare Systems, Inc. dba Connally Drugs
Professional Care Pharmacy, Inc. dba Professional Care Pharmacy, Inc.
Professional Center Pharmacy, Inc. dba Professional Center Pharmacy
Professional Health Care Consultants, Inc. dba Clark's Pharmacy
Professional Homecare Service, Inc. dba Professional Homecare
Professional Mall Pharmacy, Inc. dba Professional Mall Pharmacy
Professional Pharmacies South, Inc. dba Professional Pharmacy So Inc
Professional Pharmacies, Inc. dba Silverada Pharmacy
Professional Pharmacy-Mt. View, Inc. dba Professional Pharmacy
Professional Pharmacy of Oxford, Inc. dba Professional Pharmacy
Professional Pharmacy of West Monroe, Inc. dba Professional Pharmacy
Professional Pharmacy of Willimantic, Inc. dba Professional Pharmacy of Willimantic
Professional Pharmacy, Inc. dba Carriage Drive Pharmacy
Providence Forge Pharmacy, Inc. dba Providence Forge Pharmacy, Inc.
Prunty's Pharmacy, Inc. dba Prunty's Pharmacy, Inc.
Pryor City Drug, Inc. dba Medical Center Pharmacy
Prytania Albert & Wegmann, Inc. dba Prytania Pharmacy
PSR, Inc. dba Phil's Pharmacy
PSV Pharmacies, Inc. dba Bejay Drugs
Puna Investment Corp. dba Fountain's Drugs
Q.U.S., Inc. dba Thrifty Pharmacy
Quail Run Pharmacy, Inc. dba Quail Run Pharmacy
Quality Drug, Inc. dba Quality Drug, Inc.
Quick Rx Drugs, Inc. dba Quick Rx

Quik-Stop Pharmacy of Barley Station, Inc. dba Quik-Stop Pharmacy
Quincy Drug Company, Inc. dba Heartland Pharmacy & Gifts
Quisenberry Pharmacies, Inc. dba Quisenberry Pharmacies
R & O, Inc. dba F & F Drugs
R & R Pharmacy, Inc. dba Lincoln Pharmacy
R & R Pharmacy, Inc. dba R & R Pharmacy
R & S Drug Stores, Inc. dba R & S Drug #1
R & S Healthmart Drugs, Inc. dba R & S Drug Store #3
R & S Pharmacy, Inc. dba R & S Pharmacy
R&R Payless Drugs, Inc dba R&R Payless Drug
R-L-M-M, Inc. dba United Drug Center
R-R Drugs, Inc. dba R-R Drugs, Inc.
R. B. Hughes Drug, Inc. dba Halifax Pharmacy
R. L. Lewis Corp. dba Toronto Pharmacy
R.D.S. Assets Acq., Inc. dba Rexco Discount Drug
R.H. Moore Drug Company of Franklin, Inc. dba R.H. Moore Drug Company of Franklin, Inc.
Radcliff Drugs, Inc. dba Radcliff Drugs, Inc.
Radford Drug, Inc. dba The Medicine Shoppe
Ragland's Riverside Pharmacy, Inc. dba Ragland's Riverside Pharmacy, Inc.
Raley Prescription Pharmacy, Inc. dba Raley Pharmacy
Randall's Food & Drug Inc, Austin Division dba Randall's Pharmacy #473
Randel Pharmacy, Inc. dba Randel Pharmacy
Randolph Rx Pharmacy, Inc. dba Randolph Rx Pharmacy, Inc.
Raven Drug Co., Inc. dba Raven Drug Company
Ray's Pharmacy, Inc. dba Ray's Pharmacy, Inc.
Ray's Pleasant Hill Pharmacy, Inc. dba Ray's Pleasant Hill Pharmacy, Inc.
Rayfields Pharmacy, Inc. dba Rayfields Pharmacy
Raynor Pharmacy, Inc. dba Raynor Pharmacy
Reading Drug Store, Inc. dba Reading Drug Store, Inc.
Reagan's Pharmacy, Inc. dba Regan Home Care Pharmacy

Reaman Shawnee Pharmacy, Inc dba Reaman Prescription Center Pharmacy
Recovery Drug, Incorporated dba Recovery Drug
Red Oak Pharmacy, Inc. dba Red Oak Pharmacy
Reeves Apothecary, Inc. dba New Arcadia Drug Store
Reeves Drug, Inc. dba Reeves Drug, Inc.
Reho, Inc. dba Gurley Pharmacy
Remblake Pharmacy, Inc. dba Remblake Pharmacy, Inc.
Reynolds Drug Store, Inc. dba Reynolds Drug Store, Inc.
Rhoden Enterprises, Inc dba Suttle's Drug Store
Rich Bay Inc. dba Swan Pharmacy
Richard C. Paulsen, Inc. dba Owl Drug Store
Richard Mannino dba Mannino's Family Practice Pharmacy, Inc.
Richardson's Pharmacy, Inc. dba Richardson's Pharmacy, Inc.
Richfield Pharmacy, Inc. dba Richfield Pharmacy
Richlands Pharmacy Association, Inc dba Richlands Pharmacy
Richmond Hill Pharmacy, Inc. dba Richmond Hill Pharmacy
Rick Rodrigs Enterprises, Inc. dba Rick's Pharmacy
Ricker Pharmacy, Inc. dba Ricker Pharmacy United
Rickman & Haile, Inc. dba Perkins Drugs
Rickrene, Inc. dba Capitol Pharmacy
Riggs Pharmacy, Inc. dba Health and Pharmacy
Ringer's Drug Store, Inc. dba Ringer's Drug Store, Inc.
Rising Sun Pharmacy, Inc. dba Rising Sun Pharmacy, Inc.
Riverside Drug Mart Inc dba Riverside Drug Mart Inc
Riverside Professional Drug, Inc. dba Riverside Professional Drug
Rivesville Community Pharmacy, Inc. dba Rivesville Community Pharmacy, Inc.
RLC, Inc. dba Hospital Pharmacy-Manchester
RMK, Inc. dba Herb's Pharmacy
Roband Drugs Inc dba Economy Pharmacy
Robert Lee Cecil Enterprises, Inc. dba Cooper Drug

Robert Schreiber, Inc. dba Burns Pharmacy
Roberts Drug Store, Inc. dba Roberts Drug Store, Inc.
Roberts Drugs, Inc. dba Roberts Drugs, Inc.
Roberts Pharmacy, Inc. dba Roberts Pharmacy
Robinson's Pharmacy, Ltd. Inc. dba Robinson's Pharmacy, Ltd.
Rochelle Drug Co., Inc. dba Rochelle Drug Co.
Rockingham Center Pharmacy, Inc. dba Wentworth General Store
Rockland Pharmacy, Inc. dba Rockland Pharmacy
Rockport Pharmacy, Inc. dba Rockport Pharmacy
Roger & Son's Drug Co., Inc. dba Roger & Son's Drug Co., Inc.
Roling Enterprises, Inc. dba Oglethorpe Pharmacy
Roller Pharmacy, Inc. dba Roller Pharmacy, Inc.
Ron's Apothecary, Inc. dba Ron's Apothecary Shoppe
Ron-Ell Drugs, Inc. dba Marder's Pharmacy
Ronnie Pharmacy, Inc. dba Ronnie Rexall
Roper Drug Company, Inc. dba Roper Drug Company
Rose Drug, Inc. of Dardanelle dba Rose Drug
Rose Pharmacy, Inc. dba Rose Pharmacy, Inc.
Rosemont Pharmacy, Inc. dba Rosemont Pharmacy
Rosica The Prescription Store, Inc. dba Rosica Pharmacy
Ross Drug, Inc. dba Ross Drug
Ross Pharmacy, Inc. dba Ross Pharmacy, Inc.
Rossettie Pharmacy, Inc. dba Rossettie Pharmacy, Inc.
Rosu, Inc. dba Rann's Pharmacy
Roth Matteo Drugs, Inc. dba Crystal Lake Drug Store
Round Corner Drug, Inc. dba Round Corner Drug, Inc.
Rovex Pharmacy, Inc. dba Morseview Pharmacy
Rowan Drug, Inc. dba The Medicine Shoppe
Roy's Pharmacy, Inc. dba Roy's Pharmacy
Royer Pharmacy, Inc. dba Royer Pharmacy, Inc.
Rudies Pharmacy Corp dba Rudies Pharmacy
Rudy's Self Service Drugs, Inc. dba Midtown Pharmacy
Rumson Pharmacy, Inc dba Rumson Pharmacy

Runninger's Pharmacy, Inc. dba Runninger's Pharmacy, Inc.
Russ' Drug, Inc dba Parker Drug
Russell's Pharmacy, Inc. dba Russell's Pharmacy, Inc.
Rx Center, Inc. dba Prescription Center
Rx Enterprises, Inc. dba Franklin Pharmacy
Rx Inc. dba Food City Pharmacy
Ryan Pharmacy & Orthopedic Supply, Inc. dba Ryan Pharmacy & Orthopedic Supply
Rye Beach Pharmacy, Inc dba Rye Beach Pharmacy
S & K, Inc. dba Bradley Drugs
S & S Drugs, Inc. dba Citizens Pharmacy
S. D. Dyer & Co., Inc. dba The Prescription Shop
S. J. Sickroom Supply, Inc. dba S.J. Discout Drugs
S.N. Harrell Rx Services, Inc. dba The Medicine Shoppe
Sadler Apothecary, Inc. dba Sadler-Hughes Apothecary
Safety Drugs of Bensonhurst, Inc. dba Silver Rod Pharmacy
Saffa Healthmart Pharmacy, Inc. dba Saffa Pharmacy
Salem Apothecary, Inc. dba Salem Apothecary, Inc.
Salem's Pharmacy, Inc. dba Salem's Pharmacy, Inc.
Salladay's Standard Pharmacy, Inc. dba Salladay's Standard Pharmacy
Sallisaw Pharmacy, Inc. dba Sallisaw Pharmacy
Sam's Prescription Shop, Inc. dba Sam's Drug Store #1
San-Mar Pharmacy, Inc. dba San-Mar Pharmacy, Inc.
Sanco Drug, Inc. dba Sanco Drug, Inc.
Sanders Pharmacy, Inc. dba Sanders Pharmacy
Sandy Springs Medical Center Pharmacy, Inc. dba Sandy Springs Pharmacy #1
Sappe's Pharmacy, Inc dba Sappe's Pharmacy
Sapulpa Drive-In Pharmacy, Inc. dba Sapulpa Drive-In Pharmacy, Inc.
Saratoga Pharmacy, Inc. dba Saratoga Health Mart Drug
Sauder and Sauder, Inc. dba Steve's Clinic Pharmacy
Sav-More Family Drugs, Inc. dba Sav-More Family Drugs
Sav-On Drugs, Inc. dba Sav-On Drugs

Sav-On-Drugs of McComb, Inc. dba Sav-On-Drugs of McComb, Inc.
Sav-Rite Drugs, Inc. dba Formerly Sav-Rite Drugs
Savage's Drug Store, Inc. dba Savage's Drug Store
Savalot Pharmacy of Ft. Ashby, Inc. dba Savalot Pharmacy of Ft. Ashby, Inc.
Save More Drugs of Seaford Inc dba Save More Drugs
Save Way Pharmacy, Inc., dba Saveway Pharmacy, Inc.
Save Way Pharmacy of New Castle, Inc. dba Save Way Pharmacy
Savitz Drug Store, Inc. dba Abbeville Drug Co.
Savmor Drugs, Inc. dba Savmor Drugs, Inc.
Sawnee Drug Co., Inc. dba Sawnee Drug
Saxon & Wasserott, Inc. dba Patient Care Pharmacy
Saywell Drug Store, Inc. dba Saywell Drug Store, Inc.
Scareast Pharmacy, Inc. dba Wilmont Pharmacy
Schaefer Health Enterprises, Inc. dba Rose City Drugs
Schleper Pharmacy, Inc. dba The Prescription Shop
Schmidt & Sons Pharmacy, Inc. dba Schmidt & Sons Pharmacy, Inc.
Schroeder Drugs, Inc. dba Schroeder Drugs, Inc.
Schuchardt Enterprises, Inc. dba Sun Mart Discount Pharmacy
Schulz & Wroten Pharmacy, Inc. dba Schulz & Wroten Pharmacy
Schwieterman's Drugstores, Inc. dba Schwieterman's Drugstores, Inc.
Scotsvil Pharmacy, Inc. dba Scotsvil Pharmacy, Inc.
Scott Meeks, Inc. dba Scotts Pharmacy
Scott Robison's Pharmacy, Inc. dba Scott Robison's #3
Scott Robison's Presc., Inc. dba Scott Robison's Presc., Inc.
Scott Robison's Rx, Inc. dba Scott Robison's Rx, Inc.
Scott-Puckett, Inc dba W.T. Froman Drug
Seaburg Drug, Inc dba Seaburg Drug
Seaman's Pharmacy, Inc. dba Seaman's Pharmacy & Variety
Sedgwick Pharmacy Inc dba Sedgwick Pharmacy

Segedpedem, Inc. dba Crescent Drug
Seitz Drug Co. Inc. dba Seitz Drug Co., Inc.
Sel, Inc. dba The Medicine Shoppe
Seminole Drug, Inc. dba Seminole Drug
Semiole Hartzog Pharmacy, Inc. dba Seminole Hartzog Pharmacy, Inc.
Sentry Drug, Inc. dba Sentry Drug, Inc.
Sentry Drugs of Alexandria, Inc. dba Sentry Drugs of Alexandria, Inc.
Sentry Drugs of Pineville, Inc. dba Sentry Drugs of Pineville
Sentry Drugs of Simmesport Inc dba Sentry Drugs of Simmesport
Service Drug of Lafayette, Inc. dba Service Drug of Lafayette
Service Drug Store of Pinetops, Inc dba Service Drug Store of Pinetops, Inc
Sessner Pharmacy, Inc. dba Medicine Shoppe
Shabsis Pharmacy, Inc. dba Rafieh Pharmacy
Shadowwood Pharmacy, Inc. dba Shadowwood Pharmacy, Inc.
Shan-La Inc dba Park Plaza Pharmacy
Shapiro's, Inc. dba Shapiro's Drug Store
Shay Investments, Inc. dba Professional Pharmacy
Sheely's Drug Store, Inc. dba Sheely's Drug Store
Sheemir Corp dba Marben Pharmacy
Shelton's Pharmacy, Inc. dba Shelton's Pharmacy
Sher Drive Pharmacy, Corp. dba Sher Drive Pharmacy, Corp.
Shields Prescription Pharmacy, Inc. dba Shields Prescripion Pharmacy
Shipp's Pharmacy, Inc. dba Shipp's Pharmacy
Shivji Pharmacy Corp. dba Weldon Pharmacy
Shore Drug Inc dba Shore Drug Inc
Shri Drug Inc. dba Sure Drugs
Shrivers Drug Co., Inc. dba Shrivers Pharmacy #1
Shurveen International, Inc dba Blaine's United Drugs
Silver Star Pharmacy, Inc. dba Silver Star Pharmacy

Simmons Healthgard Drug, Inc. dba Simmons Drug & Video
Siro's Pharmacy, Inc. dba Siro's Pharmacy, Inc.
Skinner & Hans, Inc. dba Hills Prescription Shop
Skyline Pharmacy, Inc. dba Skyline Pharmacy
Slate Belt Pharmacy, Inc. dba Slate Belt Pharmacy, Inc.
Slater Pharmacy, Inc. dba Slater Pharmacy
Slaybaugh Drug Co., Inc. dba Slaybaugh Drug Co., Inc.
Sloan's Drugs of Fairborn, Inc. dba Sloan's Drugs
Smith Drug Store, Inc. dba Smith Drug Store, Inc.
Smith Pharmacy, Inc. dba Smith Pharmacy
Smith Plaza Drugs, Inc. dba Plaza Drug Center
Smith's Drug Store No. 1, Inc. dba Smith's Drug Store No. 1, Inc.
Smith's Drug Store No. 2, Inc. dba Smith's Drug Store No. 2, Inc.
Smith's Drug, of Forest City, Inc. dba Smith's Drug, Inc.
SMS Pharmacy, Inc. dba Hague Pharmacy
Snell's Pharmacy, Inc. dba Snell's Pharmacy
Soldotna Prof. Pharmacy, Inc. dba Soldotna Professional Pharmacy
Somerset Drug Co., Inc dba Somerset Drug
Somerset Park, Inc. dba Somerset Park Pharmacy
Soo Thrifty Drug Company, Inc. dba Soo Thrifty Drug Company
Sooner Pharmacy, Inc. of Tishomingo dba Sooner Pharmacy
Soperton Pharmacy, Inc. dba Soperton Pharmacy
Soundview Pharmacy, Inc. dba Soundvew Pharmacy, Inc.
South Cobb Pharmacy, Inc. dba South Cobb Pharmacy
South Park Pharmacy, Inc. dba South Park Pharmacy, Inc.
Southern Pharmacy Services, Inc. dba Main Street Pharmacy
Southgate Rexall Drug And Variety, Inc. dba Southgate Rexall Pharmacy
Southland Drugs #2, Inc. dba Southland Drugs #2
Southland Drugs, Inc. dba Southland Drugs
Southside Pharmacy, Inc. dba Southside Pharmacy, Inc.

Southwood Medical Pharmacy, Inc. dba Southwood Medical Drugs
Southwood Pharmacy, Inc. dba Southwood Pharmacy, Inc.
Spalding Medical Products, Inc. dba Henry's Professional Pharmacy
Sparks Drug Co., Inc dba Greenbrae Drug
Sparta Discount Drugs, Inc. dba Sparta Discount Drugs
Spears Pharmacy, Inc dba Spears Pharmacy
Spencer's Drugstore, Inc. dba Spencer's Drugstore, Inc.
SPF, Inc. dba Simon's Pharmacy #1
Spoonamore Drug Company, Inc. dba Leake Pharmacy
Springfield Drugs, Inc. dba Springfield Drugs, Inc.
Springfield Healthmart, Inc. dba Springfeld Healthmart/ Springfield Drug Store
Springfield Pharmacy, Inc. dba Springfeld Pharmacy, Inc.
Springs Road Pharmacy, Inc. dba Springs Road Pharmacy, Inc.
Springville Pharmacy, Inc. dba Springville Pharmacy, Inc.
St Nicholas Pharmacy Inc dba St Nicholas Pharmacy Inc
St. Bernard Drugs, Inc. dba St. Bernard Drugs
St. George Pharmacy, Inc dba St. George Pharmacy, Inc
St. Nicholas Pharmacy, Inc. dba St. Nicholas Pharmacy
Stacy's Pharmacy, Inc. dba Stacy's Pharmacy
Staff Medical Supply, Inc. dba Jacoff Pharmacy
Staker's Drug Inc dba Staker's Rexall
Stan's Pharmacy, Inc dba Stan's Pharmacy
Standard Drug Co. of Troy, Inc. dba Standard Drug Co. of Troy, Inc.
Standard Drug, Inc. dba Standard Drug
Stanford Pharmacies, Inc dba Kohler Professional Pharmacy
Stanley Drugs, Inc. dba Stanley Drugs, Inc.
Stanton Discount Pharmacy, Inc dba Stanton Discount Pharmacy, Inc
Stanton's Drugs Inc dba Stanton's Drugs
Stantonsburg Drug Company, Inc. dba Stantonsburg Drug Company. Inc.
Star Pharmacy, Inc. dba Star Discount Pharmacy

Star Valley Drug Company Inc dba Home Pharmacy
Starling Pharmacy, Inc. dba Starling Pharmacy, Inc.
Startex Pharmacy, Inc. dba Startex Pharmacy, Inc.
Steele's Pharmacy, Inc dba Steele's Pharmacy, Inc
Stephen D Adams Pharmacies, Inc dba Lawrence Pharmacy
Stephen J. Glaros, Pharmacist, Inc. dba Wood's Pharmacy
Stephens' Drugs, Inc. dba Stephens' Drugs, Inc.
Stern-Strathmoore Drugs, Inc. dba Stern Drugs & Home Medical Equip.
Steve Miller Drugs, Inc. dba Blue Valley Healthmart Pharmacy_
Steve's Pharmacy, Inc dba Steve's Pharmacy
Steven Tammara, Inc. dba T/A Glendale Pharmacy
Stewart Pharmaceuticals, Inc. dba Macketan's Family Pharmacy
Stirnimann Inc dba Kirkwood Pharmacy
Sto-Pharm, Inc dba Sibert's Drug Store
Stone Medical Pharmacy, Inc. dba Stone Medical Pharmacy, Inc.
Stovall Pharmacy, Inc. dba Stovall Pharmacy, Inc.
Strafford Pharmacy, Inc. dba Strafford Pharmacy, Inc.
Strickland's Pharmacy, Inc. dba Strickland's Pharmacy
Stroud Drug, Inc., Harding Drug, Inc. dba Harding Drug
Stuart Circle Pharmacy, Inc. dba Stuart Circle Pharmacy, Inc.
Stuart Nover Pharmacy of Linden, Inc. dba Arkay Pharmacy
Stultz Pharmacy, Inc. dba Stultz Pharmacy, Inc.
Stuts Drug Store, Inc. dba Stuts Healthmart Pharmacy
Suburban Pharmacy, Inc dba Valley Drug
Sudeen Pharmacy, Inc. dba Sudeen's Pharmacy
Sulenes Enterprises, Inc. dba Mega Save Rite United
Sullins Rexall Drug, Inc. dba Sullins Rexall Drug, Inc.
Sulphor Springs Brookshire Pharmacy, Inc dba Brookshire's Pharmacy
Summerton Drugs, Inc. dba Summerton Drugs
Summit Enterprises, Inc. dba Super G Drugs
Sumter Cut Rate Drug, Inc. dba Sumter Cut Rate Drug, Inc.
Sunshine Drugs, Inc. dba Sunshine Drugs

Super H Pharmacy, Inc. dba Super H Pharmacy, Inc.
Super Star's Store, Inc. dba Terrace Drug
Sussman Drugs, Inc. dba Sussman Drugs, Inc.
Swanton Pharmacy, Inc. dba Swanton Pharmacy
Sycamore Cardinal Drug, Inc. dba Sycamore Cardinal Drug, Inc.
T. P. Discount Drugs, Inc. dba T.P. Discount Drugs
T.D., Inc. dba Taylor Drug
T.E.P., Inc dba Brighton Pharmacy
T.J.T. Pharmacy, Inc. dba Berg Pharmacy
T.M.D.H., Inc. dba Arnold Drug Co.
Tabor City Medicine Mart, Inc dba Tabor City Medicine Mart, Inc
Tabor Drug, Inc. dba Tabor Drug, Inc.
Tac, Inc. dba Russo's Pharmacy
Tallapoosa Drug Company, Inc. dba Tallapoosa Drug Company
Tamp, Inc. dba Pomario Pharmacy
Tancredi Pharmacy, Inc. dba Tancredi Pharmacy, Inc.
Tappahannock Cardinal Pharmacy, Inc. dba Tappahannock Cardinal-Ben Franklin
Tappahannock Pharmacy, Inc. dba Tappahannock Pharmacy, Inc.
Tarpley & Smith Drugs, Inc. dba Thrifty Pharmacy
Taylor County Drug Co., Inc. dba Taylor County Drug Co.
Taylor Drug Store, Inc. dba Taylor Drug Store, Inc.
Taylor Pharmacy, Inc. dba Taylor Pharmacy
Taylors Drug Company, Inc. dba Taylors Drug Company, Inc.
Taylorsville Drug Co., Inc dba Taylorsville Pharmacy
T.D., Inc. dba The Drug Store
Teche Drugs, Inc. dba Teche Drugs
Tele-Tector of Eastern North Carolina, Inc. dba Kue's Pharmacy
Temple Pharmacy, Inc. dba Temple Pharmacy
Temporary Pharmaceutical Sales, Inc dba The Wimberley Pharmacy

Tequesta Pharmacy, Inc. dba Tequesta Pharmacy
Thatcher Pharmacy, Inc. dba Thatcher Pharmacy, Inc.
Thayer's Colonial Pharmacy, Inc. dba Thayer's Colonial Phar Inc (Rotech)
The Ainsworth Corporation dba Northside Pharmacy
The Apothecary & Escondido Surgical Supply, Inc. dba The Apothecary
The Apothecary, Inc. dba The Apothecary
The Broadway Company, Inc. dba Lewistown Pharmacy
The Cheriton Pharmacy, Inc. dba Cheriton Pharmacy
The Country Squire Discount Pharmacy, Inc. dba Country Squire Pharmacy
The Davantha Corporation dba Stanton's Drugs
The Drug Shoppe, Inc. dba The Drug Shoppe, Inc.
The Drug Store Co., Inc. dba The Drug Store
The Family Health Clinic, Inc. dba Morehead Clinic Pharmacy
The Finch Corporation dba Old Lyme Pharmacy
The Galesburg Clinic Pharmacy, Inc. dba The Galesburg Clinic Pharmacy, Inc.
The Jinny Ann #2 Corporation dba Bestyet Pharmacy
The Lurey Companes, Inc. dba Hawk's Drugs #1
The Medicine Cabinet of Lake City, Inc. dba The Medicine Cabinet
The Medicine Mine, Inc. dba The Medicine Mine, Inc.
The Medicine Shoppe of West Columbia, Inc. dba The Medicine Shoppe
The Medicine Stop, Inc. dba The Medicine Stop
The Palace Drug Store, Inc. dba The Palace Drug Store
The Peoples Drug Store, Inc. dba The Peoples Drug Store, Inc.
The Pickwick Pharmacy, Inc. dba Pickwick Pharmacy
The Pill Box, Inc. dba The Pill Box
The Polish American Pharmacy of Greenpoint Inc dba Polish American Pharmacy
The Prescription Center of Parsons, Inc. dba Wal-Mart Pharmacy of Parson

The Prescription Shop, Inc. dba The Prescription Shop
The Prescription Shoppe, Inc. dba The Prescription Shoppe, Inc.
The Professional Pharmacy, Inc. dba The Professional Pharmacy #3
The Rx Shoppe, Inc. dba The Rx Shoppe, Inc.
The Shaw Corporation dba Shaw's Pharmacy #3 And Point Circle Pharmacy
The Watts Co. of Marianna, Inc. dba Waco Drugs & Gifts
Therrell Drug Store Inc dba Therrell Drug Store
This Way Pharmacy, Inc dba This Way Pharmacy, Inc
Thomas & Hall Pharmacy, Inc dba Thomas & Hall Pharmacy
Thomas Drug Stores, Inc. dba Thomas Drug Store #1
Thompson Dean Drug, Inc. dba Thompson Dean Drug
Thorne Drug & Jewelry Inc. dba Thorne Drug & Jewelry Inc.
Thrif-T-Way Pharmacy #8, Inc. dba Thrif-T-Way Pharmacy #8
Thriftway Pharmacy Inc. dba S.B.C. Rx Inc
Thrifty Drug Store, Inc. dba Thrifty Drug
Thrifty Way Pharmacy of Abbeville, Inc. dba Thrifty Way Pharmacy
Thrifty Way Pharmacy of Arnaudville, Inc. dba Thrifty Way Pharmacy of Arnaudville
Thrifty Way Pharmacy of DeRidder No. 1, Inc dba Thrifty-Way Pharmacy of Deridder No. 1, Inc
Thrufty Way Pharmacy of Kaplan, Inc. dba Thrifty Way Pharmacy of Kaplan
Thrifty Way Pharmacy of Louisiana South, Inc. dba Thrifty Way Pharmacy of Louisiana South
Thrifty Way Pharmacy of New Iberia, Inc. dba Thrifty Way Pharmacy
Thrifty Way Pharmacy, Inc. dba Thirfty Way Pharmacy
Thrifty-Mac Discount Drug, Inc. dba Thrifty-Mac Discount Drug
Tibbott's Corner Drug Store, Inc. dba Tibbott's Pharmacy
Tico, Inc. dba Professional Pharmacy

Tidyman's, Inc. dba Tidyman's Pharmacy #10
Tiffany-Davis Drug, Inc. dba Tiffany's Drug #44
Timmonsville Pharmacy, Inc. dba Timmonsville Pharmacy
Tip-Top Drugs, Inc dba Tip-Top Drugs
Tischbein Apothecary, Inc dba Tischbein Pharmacy
Todd's Pharmacy, Inc. dba Todd's Pharmacy, Inc.
Tom-Kat-Ben Corp. dba Mastrolia Pharmacy
Tone Pharmacy Mgt., Inc dba Tone Pharmacy Mgt., Inc
Tony's Forest Hills Pharmacy, Inc. dba Tony's Forest Hills Pharmacy
Tony's Pharmacy dba Ouachita Pharmacy, Inc.
Total Home Health Care, Inc. dba Total Home Health Care, Inc.
Towler Drug Company, Inc. dba Center Pharmacy
Towne Drugs, Inc. dba Towne Drugs, Inc.
Towne Pharmacy, Inc. dba Dick's Pharmacy
Trahans Drugs, Inc. dba Trahans Drug Store, Inc.
Transit Valley Drug Mart Inc dba Transit Valley Drug Mart Inc
Traucht Enterprise, Inc. dba The Medicine Shoppe #72
Tri-Pharm, Inc. dba Blue Ridge Pharmacy
Tri-Valley Pharmacy, Inc. dba Tri-Valley Pharmacy
Triangle Pharmacy, Inc. dba Twin City Pharmacy
Trigun Pharmacy Inc dba Avenue C Pharmacy
Tripp, Inc. dba Edwards Pharmacy
Troop-Mitchell Pharmacies, Inc. dba Troup Drug Store
True Discount Pharmacy of Carthage, Mo., Inc. dba Vista Pharmacy
True Quality Pharmacies Inc. dba Wal-Mart Pharmacy
Tucker Pharmacy, Inc. dba Tucker-State Pharmacy
Tulip Drugs Inc dba Lee's Drug Store
Tuxedo Park Pharmacy, Inc. dba Tuxedo Park Pharmacy
Tuxedo Pharmacy, Inc. dba Tuxedo Pharmacy
Twin Harbor Drug, Inc. dba Twin Harbor Drug
Twin Harbor Drugs, Inc. dba Twin Harbor Drugs
Twinbrook Family Pharmacy, Inc. dba Twinbrook Family Pharmacy, Inc.

Twinsburg Pharmacy, Inc dba Twinsburg Pharmacy
Tyler Health Enterprises, Inc. dba Tyler Family Pharmacy
Tyner Pharmacy, Inc. dba Tyner Pharmacy, Inc.
Umatilla Pharmacy, Inc. dba Umatilla Healthmart Pharmacy
Union Avenue Pharmacy, Inc dba Union Avenue Legend Pharmacy
Union Pharmacy of Frankfort, Inc. dba The Prescription Center
Union Square Drugs, Inc. dba Union Square Drugs
United Discount Drug of Guymon, Inc. dba United Discount Drug
United Discount Drug of Purcell, Inc. dba United Discount Drug
United Discount Drug, Inc. dba United Discount Drug, Inc.
United Drug & Liquor, Inc. dba United Drug & Liquor
University Drug, Inc. dba University Drug, Inc.
Uptown Pharmacy of Kingman, Inc dba Uptown Pharmacy of Kingman
V & F Drugs, Inc dba Burke's Pharmacy
V & V Drug, Inc. dba V & V Drug, Inc.
Val-U-Mart Pharmacies, Inc. dba Logli Val-U-Mart Pharmacy
Valbon, Inc. dba The Village Pharmacy
Vale Park Pharmacy, Inc. dba Glendale Pharmacy
Valley Drug, Inc dba Valley Drug
Valley View Pharmacy, Inc. dba Valley View Pharmacy, Inc.
Valu-Med Pharmacy, Inc. dba Valu-Med Pharmacy
Value Mart, Inc. dba Hite Drug
Valure's Pharmacy, Inc. dba Valure's Pharmacy
Van Professional Pharmacy, Inc. dba Van Professional Pharmacy
Varina Pharmacy, Inc. dba Varina Cardinal Pharmacy
Vashon Pharmacy, Inc. dba Vashon Pharmacy
Vaughan's Pharmacy, Inc. dba Vaughan's Pharmacy
Vaughn's Pharmacy, Inc. dba Davis Pharmacy
Vernon Drug, Inc. dba Vernon Drug, Inc.
Vic Vena Pharmacy, Inc. dba Vic Vena Pharmacy

Vidalia Pharmacy, Inc. dba Vidalia Pharmacy
Vilas Drug Co., Inc dba Vilas Pharmacy
Village Apothecary of Burlington City, Inc. dba The Village Apothecary
Village Drug Shop of Athens, Inc. dba Village Drug Shop
Village Drug, Inc. dba Medicap Pharmacy
Village Drugs, Inc. dba Village Drug Store
Village Pharmacists Inc dba Village Pharmacists
Vincent's Pharmacy, Inc. dba Vincent's Pharmacy, Inc.
Virgie Clinic Pharmacy, Inc. dba Virgie Clinic Pharmacy
Vista Pharmacy, Inc. dba Vista Pharmacy / Ft Scott
Vitale Apothecary, Inc. dba Vitale Apothecary, Inc.
Voshell's Pharmacy, Inc. dba Voshell's Pharmacy
W & B Plaza Pharmacy, Inc. dba Plaza Pharmacy
W & S Drugs, Inc. dba Whitley Pharmacy
W-S Associates, Inc. dba Apple Discount Drugs
W. B. Drugs, Inc. dba Rx Drug Center
W. H. and R. K Drugs, Inc. dba Sun Bay Pharmacy
W. S. Flanagin, Jr., Inc. dba Hill Drug Company
W.B.C. Pharmacies, Inc. dba Iowa Pharmacy
W.F. Thomas Drugs, Inc. dba Thomas Drugs
Wal-Mart Pharmacy of Bonham, Inc. dba Wal-Mart Pharmacy
Wal-Mart Pharmacy of Center, Inc. dba Wal-Mart Pharmacy
Wal-Mart Pharmacy of Ft. Scott, Inc. dba Wal-Mart Pharmacy
Wal-Mart Pharmacy of Nevada, Inc. dba Wal-Mart Pharmacy
Wal-Mart Pharmacy of Sulphur Springs, Inc. dba Wal-Mart Pharmacy
Walker Drug Co., Inc. dba Walker Drug Co., Inc.
Walker Pharmacy, Inc. dba Walker Pharmacy
Wall & Millikan, Inc. dba Carolina Pharmacy
Wallis Drug Corp dba Wallis Drug
Walnut Hill Pharmacy, Inc. dba Walnut Hill Pharmacy
Walsh-McCagh Kellough Pharmacy, Inc. dba Walsh-McCagh Kellough Pharmacy
Walterboro Drug, Inc. dba Walterboro Drug Company
Walton Drug Company, Inc. dba Carmichael Drug
Waltz & Brazzel Pharmacy, Inc. dba Waltz & Brazzel Pharmacy

Wannamaker Drug Store, Inc. dba Wannamaker Drug Store, Inc.
Ward Drug Co. of Nashville, Inc. dba Ward Drug Co. of Nashville, Inc.
Warren Drug Company of Benson, Inc. dba Warren Drug Company of Benson
Warren Pharmacy, Inc. dba Brainard Place Pharmacy
Warsaw Pill Box, Inc. dba Warsaw Pill Box
Waschko's Pharmacy, Inc. dba Waschko's Pharmacy, Inc.
Waterproof Drugs, Inc. dba Colvin's Pharmacy
Watson Apothecary, Inc. dba Pamida Pharmacy
Waverly Prescription Shoppe, Inc dba Waverly Prescription Shoppe
Waymar, Inc. dba Miller Pharmacy
Wayne Edwards Pharmacy, Inc. dba Wayne Edwards Pharmacy
Weaverville Drug Co., Inc. dba Weaverville Drug Co., Inc.
Webb's Pharmacy, Inc. dba Webb's Pharmacy
Webster Drugs, Inc. dba Webster Drugs, Inc.
Webster's Pharmacy, Inc. dba Webster's Pharmacy
Weedsport Pharmacy, Inc. dba Weedsport Pharmacy
Weinbach Inc. dba Weinbach Pharmacy
Weise Prescription Shop, Inc. dba Weise Pharmacy
Weiser Food Corporation dba Weiser IGA Pharmacy
Welfley Pharmacy, Inc dba Welfley Pharmacy, Inc.
Wendell Drug Center, Inc. dba Wendell Drug Center
Wendling's Pharmacy, Inc. dba Wendling's Pharmacy
Weng, Inc. dba Wayne's Rx Pharmacy
Werner Drug Co., Inc. dba Werner Drug Store
Wesco Drug Company, Inc. dba Village Pharmacy
West End Pharmacy, Inc. dba West End Pharmacy, Inc.
West Florida Pharmacies, Inc. dba Jackson City Drugs
West Georgia Home Medical Equipment, Inc. dba Holmes Pharmacy
West Main Pharmacy, Inc. dba West Main Pharmacy, Inc.
West Point Acquisition Corp. dba West Point Cardinal Drug
West Reading Drug Store, Inc. dba West Reading Drug Store, Inc.

Westerly Pharmacy dba Westerly Pharmacy & Surg, Inc.
Western Drug, Inc dba Western Drug #101
Western Maryland Pharmaceutical Services Inc. dba The Medicine Shoppe-Hagerstown
Western Michigan Apothecaries, Inc. dba The Apothecary Shoppe
Westland Drugs of Bowling Green, Inc. dba Westland Drugs of Bowling Green, Inc.
Westland Medical Pharmacy, Inc. dba Westland Medical Pharmacy, Inc.
Westminster Pharmacy, Inc dba Westminster Pharmacy
Westminster Rexall Drug, Inc. dba Westminster Drug
Westside Drugs, Inc. dba Hospital Discount Drug Center
Westwood Pharmacy, Inc. dba Westwood Pharmacy, Inc.
Whidbey Island Drug Company, Inc. dba Island Drug
White's, Inc. dba White's Pharmacy
Whitley Drugs, Inc. dba Whitley Drugs, Inc.
Wickliffe Pharmacy, Inc. dba Wickliffe Pharmacy, Inc.
Wiechart Pharmacies, Inc. dba Wiechart Pharmacies #1
Wilco Drugs, Inc. dba Parker Pharmacy
Wilderness Center Pharmacy, Inc. dba Wilderness Center Pharmacy
Willamina Drugs, Inc dba Willamina Drugs
Willapa Harbor Pharmacies, Inc. dba South Bend Pharmacy
William and James Drugs, Inc. dba Josephs Pharmacy
Williams Bros. Health Care Pharmacy, Inc. dba Williams Bros. Health Care Pharmacy, Inc.
Williams Drug Center, Inc. dba Williams Drug Center
Williams Pharmacy, Inc. dba Williams Pharmacy, Inc.
Williamsburg Drug Co. Inc dba Wlliamsburg Drug Co
Wilmot Center Pharmacy, Inc dba Wilmot Pharmacy
Wilson Pharmacy, Inc. dba Wilson Pharmacy
Winco, Inc. dba Village Pharmacy
Wind River Pharmacy, Inc. dba Wind River Pharmacy
Windsor Pharmacy, Inc. dba Windsor Pharmacy, Inc.
Winnsboro Drug Store, Inc. dba Winnsboro Drug Store
Wish's Drug #1, Inc. dba Wish's Drug #1, Inc.

Wolfe's Pharmacy, Inc. dba Wolfe's Pharmacy
Womble Drug Company, Inc. dba Womble Drug Company, Inc.
Woodall Pharmacy. Inc. dba Berry's
Woodard's Pharmacy, Inc. dba Woodard's Pharmacy
Woodland Pharmacy, Inc. dba Woodland Pharmacy
Woodlane Family Pharmacy, Inc. dba Woodland Pharmacy
Woodlyn Pharmacy, Inc. dba Woodlyn Pharmacy, Inc.
Woodruff Rx One, Inc. dba Medicap Pharmacy
Woods Pharmacy, Inc. dba Woods Pharmacy, Inc.
Woodward Pharmacy, Inc. dba Detroit Medical Arts Pharmacy
Woolard's Drugs, Inc. dba Woolard's Drugs, Inc.
Wooldridge Drugs Corp., Inc. dba Wooldridge Drugs Corp., Inc.
Wornom's Pharmacy, Inc. dba Charlie's Pharmay
Wright Pharmacy, Inc dba Wright Drug Co
Wurlitzer Pharmacy Inc dba Wurlitzer Pharmacy Inc
Wyatt's Pharmacy, Inc. dba Charle McWilliams, Inc.
Wycliff Pharmacy, Inc. dba Wycliff Pharmacy, Inc.
Wycoff Drug, Inc. dba Wycoff Health Mart Drug
Wynn's Pharmacy, Inc. dba Wynn Pharmacy
Wyoming Rexall Drug, Inc. dba Wyoming Rexall Drug, Inc.
X-Ray Pharmacy, Inc. dba X-Ray Pharmacy
X.I.P. Pharmacy, Inc. dba XIP Pharmacy
Xaver Williams Corporation dba Medicine Shoppe #274
Yancey's Drugs, Inc. dba Yancey's Pharmacy
Yanceyville Drug Co., Inc. dba Yanceyville Drug Co., Inc
Yauger Park Pharmacy, Inc. dba Yauger Park Pharmacy
York Drug, Inc. dba Poquoson Discount Pharmacy
Yorkville Drug Store, Inc. dba Yorkville Drug Store, Inc.
Yosemite Drug Corporation dba Yosemite Drug
Young Brothers Pharmacy, Inc. dba Young Brothers Pharmacy
Z-Med, Inc. dba Town & Country Pharmacy
Zarin, Inc. dba Safety Drugs
Zimm Pharmacy, Inc. dba Zim M Pharmacy, Inc.

(3)

Supreme Court, U.S.
FILED
FEB 10 1998
OFFICE OF THE CLERK

No. 97-1152

In the Supreme Court of the United States

OCTOBER TERM, 1997

IN RE: BRAND NAME PRESCRIPTION DRUGS ANTITRUST LITIGATION,

ABBOTT LABORATORIES, *ET AL.*,
Petitioners,

v.

HJB, INC., *ET AL.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF OF INDIVIDUAL PLAINTIFF RESPONDENTS IN OPPOSITION TO PETITION

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Philadelphia, Pennsylvania 19103-7286
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Attorneys for Rite Aid Respondents

(*Full identification of these and other respondents filing this brief, and their counsel, is on next page and signature pages*)

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THIS BRIEF IS FILED ON BEHALF OF THE INDIVIDUAL PLAINTIFF RESPONDENTS

THE INDIVIDUAL PLAINTIFF RESPONDENTS ARE ALL RESPONDENTS IDENTIFIED IN APPENDIX K TO THE PETITION (APP. 134-242A) EXCEPT THE NAMED PLAINTIFFS IN THE FEDERAL CLASS ACTION LISTED AT APP. 135-36A AND EXCEPT FULLERTON DRUG COMPANY, INC., CHICAGO DRUG COMPANY, INC., LTD. PHARMACY, INC., KADEL DRUGS, INC., BERDEL, INC., WEISS PHARMACY, INC., AND FOSTER-WESTERN PHARMACY, INC. (APP. 137A)

STATEMENT UNDER SUPREME COURT RULE 29.6

None of the Individual Plaintiff Respondents has a parent company or nonwholly-owned subsidiary, except as set forth below:

- The parent company of Pathmark Stores, Inc. (App. 136a) is PTK Holdings, Inc., which is a wholly-owned subsidiary of Supermarkets General Holdings Corp. The parent company of Supermarkets General Holdings Corp. is SMG-II Holdings Corp.

- The parent company of Revco D.S., Inc. (App. 136a) is CVS Corporation.

- The parent company of The Vons Companies, Inc. (App. 136a) is Safeway, Inc.

- The correct name of the respondent identified at App. 137a as Giant Food, Inc. is Giant of Maryland, Inc., the parent company of which is Giant Food, Inc.

- The parent company of Smitty's Super Valu, Inc. (App. 139a) is Smith's Food & Drug Centers, Inc.

- The parent company of Pharmhouse Corp. d/b/a The Rx Place (App. 139a) is Pharmhouse Corp.

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In the Supreme Court of the United States

OCTOBER TERM, 1997
No. 97-1152

IN RE: BRAND NAME PRESCRIPTION DRUGS ANTITRUST LITIGATION,

ABBOTT LABORATORIES, *ET AL.*,
Petitioners,

v.

HJB, INC., *ET AL.*,
Respondents..

BRIEF OF INDIVIDUAL PLAINTIFF RESPONDENTS IN OPPOSITION TO PETITION

The question presented by the petition for certiorari bears no resemblance to anything briefed, argued, or decided by the Court of Appeals. Chief Judge Posner's opinion for that court held that, to the extent that the plaintiff retail purchasers of brand-name prescription drugs have sought to recover for a conspiracy by the drug manufacturers to maintain artificially high prices for drugs that the plaintiffs purchased *indirectly* through *non-conspirator* wholesalers, the "indirect purchaser" rule of *Illinois Brick Co. v. Illinois*, 431 U.S. 720 (1977), *does* apply to bar the plaintiffs' claims. The opinion said nothing about creating any "new exception" to the rule of *Illinois Brick*. Chief Judge Posner's one-sentence observation that purchasers from wholesalers who *are* conspirators are *direct* — not indirect — purchasers is a correct statement of both fact and law. There is nothing about it that calls for review by this Court, and the petition therefore should be denied.

STATEMENT OF THE CASE

The claims. Thousands of community retail pharmacies (*see* App. 134-242a) have brought these coordinated and consolidated actions under Section 1 of the Sherman Act, 15 U.S.C. § 1, against the major manufacturers and wholesalers of brand-name prescription drugs. The plaintiffs allege a "unitary" conspiracy among the manufacturers and wholesalers "for the purpose of fixing, raising, maintaining, and stabilizing" the prices of the drugs (App. 53a) by, among other things, refusing "to make available to community pharmacies various discounts, rebates and other price-lowering mechanisms that each of the Manufacturer Defendants has made available to 'institutional' or 'managed' care buyers." App. 47a (footnote omitted).

The evidence. The record demonstrates that, in the district court's words, it is "virtually undeniable" that all of the manufacturer defendants maintained higher drug prices for community pharmacies than for managed care companies such as HMOs. App. 56-58a. In a decision that the manufacturers did not seek to appeal, the district court found ample evidence of a conspiracy among the manufacturers to maintain this two-tier pricing scheme: "Through a series of meetings, a continuous interchange of information, and an ultimate interchange of commitment, the defendants formed a cartel to prevent their discounting from spreading to the retail segment and to make sure that nobody strayed from this course." App. 62a. The evidence included a constant stream of meetings, communications, and conversations, at the highest levels of the industry (App. 63-64a); the creation and operation of a "chargeback" system — a collaborative industry-wide pricing system that precludes wholesalers from selling to community pharmacies low-priced drugs destined for favored purchasers — for maintenance of the differential pricing (*see* App. 2-3a (court of appeals' opinion)); and discussions about, and common action in response to, requests by community pharmacies for discounts or contract pricing (App. 58-61a). In contrast to the manufacturers' argument that the difference in pricing was just a reflection of managed care's better ability to move sales to competitors' drugs if price concessions

were not granted, the evidence showed that manufacturers actually knew that community pharmacies had that same ability but denied them managed care's more favorable price levels anyway. App. 67-71a.

The record contains ample evidence that the conspiracy among the manufacturers also extended to the wholesaler defendants, who were particularly interested in stopping the spread of retail pharmacy buying groups that might displace the wholesalers' role. The wholesalers were fully aware of the manufacturers' agreement not to sell at discounts to these buying groups (*see* App. 59a (quoting testimony by wholesaler)), and they willingly participated in it. In the words of the court of appeals, "the record discloses a number of instances in which officers of the defendant wholesalers urge manufacturers to hold the line against discounting to pharmacies and their buying groups, and pledge to adhere to the chargeback system." App. 24a. Though the court of appeals did not quote the "tasty morsels" and "smoking guns" in the record that comprise this evidence (*id.*), the proof consists of documents and testimony that the wholesalers "invented" and "developed" the chargeback system for the manufacturers to prevent "diversion" to disfavored purchasers of low-priced drugs intended for managed care, and documents and testimony about wholesalers' exhortations to prevent retail buying groups from growing through the availability of discounts. Again in the words of the court of appeals (App. 25-26a):

> "Desiring a piece of the action with the favored customers, who were proliferating, the wholesalers agreed to implement a chargeback system that would shore up the manufacturers' system of price discrimination, an integral component of the price-fixing conspiracy. And desiring to discourage buying groups they joined with the manufacturers to hold the line against granting any discounts to such groups and so discourage their formation by reducing the advantages of membership."

Petitioners are correct that "the wholesalers have never been plaintiffs in this litigation." Pet. at 13 n.11. Whether the wholesalers could have brought claims against the manufacturers despite their own involvement in the conspiracy has never been determined in this case. Instead, as *co-defendants*, the wholesalers entered into a judgment-sharing agreement with the manufacturers in which they released any antitrust claims they might have had against the manufacturers. *See* App. 102-09a. The petitioners refer to this judgment-sharing agreement and release as a "settlement."

The district court's decision. Both the manufacturers and the wholesalers moved for summary judgment on the ground that there was insufficient evidence that they had participated in an antitrust conspiracy. In an April 4, 1996, decision, the district court denied the manufacturers' motion but granted the wholesalers' motion. Despite a wealth of evidence to the contrary, the court concluded that the record was devoid of proof that the wholesalers joined with the manufacturers in their anticompetitive scheme. App. 80a. The court said that the wholesalers refrained from "diverting" lower-priced drugs to retailers because of federal statutory restrictions on drug resale, rather than because of their chargeback system. App. 84-85a. The court also emphasized the wholesalers' claimed reluctance to participate in discriminatory pricing (a reluctance based, in fact, on a hostility to *any* discounting) and suggested (contrary to this Court's decision in *United States v. Paramount Pictures, Inc.*, 334 U.S. 131 (1948)) that the participation should be excused because it was the result of manufacturer coercion. *See* App. 80-82a, 89-91a.

The district court then turned to the manufacturers' motion for summary judgment under *Illinois Brick* with respect to those claims based on purchases made by plaintiffs from the wholesalers. The court explained that it previously had denied summary judgment on this issue because, at that earlier stage of the litigation, there appeared to be viable claims of "a giant vertical price-fixing conspiracy" involving joint misconduct by the manufacturers and wholesalers, making *Illinois Brick* inapplica-

ble. Now, however, the court had concluded that the wholesalers were not a part of that conspiracy, so that an *Illinois Brick* analysis was necessary. App. 92a, 96a. Performing that analysis, the court held that the facts fell within an exception under *Illinois Brick* for direct purchasers that are controlled by their suppliers, and it therefore denied summary judgment on the "indirect purchaser" claims. App. 95-101a.

The district court certified its *Illinois Brick* holding for interlocutory review and entered a final judgment in favor of the wholesalers under Federal Civil Rule 54(b), enabling immediate appeals of both issues. App. 35-44a.

The court of appeals' decision. The court of appeals accepted the *Illinois Brick* interlocutory appeal (App. 33-34a) and ordered that briefing be limited to this question (App. 31a):

> "In a private action under Section 1 of the Sherman Act, 15 U.S.C. § 1, and Section 4 of the Clayton Act, 15 U.S.C. § 15, whether the *Illinois Brick* doctrine bars price-fixing damage claims of indirect purchaser-retailers against manufacturers on the indirect purchaser-retailers' purchases from wholesalers, which are separate companies neither owned by any manufacturer nor co-conspirators of any manufacturer?"

The interlocutory appeal was consolidated with an appeal of the judgment in favor of the wholesalers and two other appeals that are not relevant here. App. 30a.

In his opinion for the court of appeals, Chief Judge Posner addressed the *Illinois Brick* issue first, and began with this introduction (App. 6a):

> "The indirect purchaser issue (with which we begin) is separate from the issue of the wholesalers' participation in the manufacturers' alleged conspiracy. *It is true that if we reversed the judge's ruling on the latter issue and so reinstated the wholesalers as*

> *defendants, and if the plaintiffs went on to obtain a judgment against the wholesalers and manufacturers, any indirect-purchaser defense would go by the board, since the pharmacies would then be direct purchasers from the conspirators.* [Citations omitted; emphasis added.] But even if we do reinstate the wholesalers as defendants, an issue discussed later in this opinion, the plaintiffs may fail at trial to establish their liability, in which event the indirect-purchaser issue will be decisive. So, the issue being fully briefed and argued in this court, we should decide it; and the fact that it may in the end not prove decisive does not show that the district judge and we were wrong to certify his ruling on the issue . . . ."

Following this introduction, the court of appeals reversed the district court's holding that *Illinois Brick* did not bar plaintiffs' claims even though (in the district court's view) the wholesalers were not co-conspirators. The court reviewed *Illinois Brick* and *Kansas v. Utilicorp United, Inc.*, 497 U.S. 199 (1990), and concluded that "the only exceptions to the *Illinois Brick* doctrine are those stated in *Illinois Brick* itself — 'where the direct purchaser is owned or controlled by its customer,' 431 U.S. at 736 n. 16, or, we suppose, vice versa." App. 7-8a. The court rejected the district court's holding that these exceptions applied to the wholesalers. App. 8-9a. Having noted that one rationale underlying *Illinois Brick* is avoidance of the "famously difficult" task of tracing a price hike through different tiers of purchasers and apportioning damages among the tiers (what the court of appeals called "incidence analysis," App. 7a), the court observed that if the wholesalers had not released their claims against the manufacturers, this precise tracing and apportionment problem would apply to plaintiffs' claims — a fact confirming that *Illinois Brick* should bar recovery. App. 9a.

After a long intervening discussion of some unrelated issues in another of the consolidated appeals, the court turned to "the question whether the wholesalers should have been dropped as defendants." App. 24a. Reversing the district court, the court

of appeals held that there was sufficient evidence in the record — items the court labeled "tasty morsels" and "smoking guns" — to permit plaintiffs to reach a jury on the question of the wholesalers' involvement in the conspiracy. *Id.* Rejecting the wholesalers' argument to the contrary, the court held that the plaintiffs' theory of recovery — that the manufacturers and wholesalers "shore[d] up" their cartel through the chargeback system — "makes perfectly good [economic] sense" because threats posed to the wholesalers by retail buying groups gave them an incentive to try to discourage discounting to such groups. The court found that the evidence supported that theory. App. 24-26a. In conclusion, the court, referring to the wholesalers' release of claims against the manufacturers, stated that the presence of such claims could have "no significance" to whether plaintiffs stated viable claims against the wholesalers. App. 27a. Although *Illinois Brick* entitles direct purchasers to sue their customers and thereby "sows dishonor among thieves," the court pointed out that direct purchasers like the wholesalers "still may *be* thieves." *Id.* (emphasis in original).[1]

The court's decision was unanimous. The panel denied a petition for rehearing, and the full court of appeals refused a suggestion of rehearing en banc when no active member of the court asked for a vote on it. App. 131-32a.

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1. The wholesalers have filed a separate petition for certiorari at No. 97-1148 seeking review of the reversal of summary judgment in their favor. One of the other consolidated appeals dealt with the district court's jurisdiction to hear a class action alleging violations of the Alabama antitrust statute, and a separate petition for certiorari from that decision has been filed at No. 97-775.

REASONS FOR DENIAL OF THE PETITION

I. THE QUESTION PRESENTED BY THE PETITION WAS NOT BRIEFED, ARGUED, OR DECIDED IN THE COURT OF APPEALS AND IS NOT PRESENTED BY THIS CASE.

A reading of the petition for certiorari in conjunction with Chief Judge Posner's opinion provokes wonderment whether the two documents relate to the same case. The decision below bears no resemblance to the decision described in the petition. The issue the petition seeks to present — whether Chief Judge Posner erred in creating some "new exception" to *Illinois Brick* that permits purchasers from settling wholesalers to recover for passed-on overcharges needing allocation among sales tiers — does not appear anywhere in the opinion below or anywhere else in this case. Chief Judge Posner did not create the "new exception" fabricated in the petition, and there is no occasion for this Court to consider the issue here.

Petitioners' "Statement of the Case" claims difficulty following the court of appeals' reasoning (Pet. at 12), but that can only be because the "analysis" petitioners seek to "follow" does not exist. According to the petition, the court of appeals *began* its opinion by reversing the summary judgment in favor of the wholesalers, then reversed the district court's "owned or controlled" holding under *Illinois Brick*, and then "did not end its *Illinois Brick* analysis there" but instead "went on to consider the impact under *Illinois Brick* of a finding of wholesaler involvement in the alleged collusion." Pet. at 11. The petition quotes the court's statement at App. *8-9a* (made in the context of an assumption that the wholesalers were not co-conspirators) that the wholesalers are the only entities permitted to sue the manufacturers, and then, quoting App. *6a*, says that "[t]he court *later* stated" that the indirect purchaser defense would go by the board if the wholesalers were conspirators because that would make plaintiffs direct purchasers from those conspirators. Pet. at 12 (emphasis added). Finally, jumping back to the court's discussion at App. 9a of why the policies underlying *Illinois Brick* would be even more evident if the wholesalers had not released

the manufacturers, petitioners assert that the court made "the viability of [plaintiffs'] damage claims . . . depend on whether or not the manufacturers settle with the wholesalers: If there is no settlement, [plaintiffs'] claims are barred . . . . If a settlement is reached, however, then [plaintiffs'] claims somehow are activated." Pet. at 12-13.

Petitioners' description of the opinion below is contrived, fanciful, and disingenuous. Contrary to petitioners' suggestion, the court of appeals did not engage in some bizarre effort to create new exceptions to the *Illinois Brick* rule; the court merely prefaced its application of and adherence to that rule with a brief introduction explaining why it was addressing the issue at all in light of its upcoming reversal of the wholesaler summary judgment, which arguably rendered the indirect purchaser issue moot. The preface merely made the unassailable observation that if the wholesalers are conspirators, the plaintiffs are *direct* purchasers from those conspirators and *Illinois Brick* would not apply. App. 6a. Rather than create a new exception to *Illinois Brick*, the court of appeals took pains to emphasize its view that there are *no* exceptions other than those set forth in the *Illinois Brick* decision itself. App. 7-8a.[2]

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2. Some of the courts and commentators cited in the next segment of this brief as in accord with the view that *Illinois Brick* does not bar actions by purchasers from co-conspirator middlemen, have characterized this result as an "exception" to *Illinois Brick*. But, as Chief Judge Posner's language makes clear, such a label is just the product of confused analysis. This is not a situation in which, although *Illinois Brick* normally would *preclude* suit because the plaintiff's injury results from a pass-on of harm through purchase from an innocent middleman, the court *excuses* (makes an *exception* to) that preclusion for some overriding policy or other reason. Rather, this is a situation in which application of the rule of *Illinois Brick* itself — that suit must be by a direct, not an indirect, purchaser — *permits* the plaintiff to sue as a *direct purchaser* from a wrongdoer. It is a direct application of *Illinois Brick*, not an "exception."

Petitioners characterize the question they seek to bring before this Court as whether to permit "indirect-purchasing retailers to recover overcharge damages against manufacturers alleged to have conspired in violation of Section 1 of the Sherman Act" where five numbered conditions or qualifiers are present. *See* Pet. at i. Petitioners fail to list among those conditions or qualifiers the fact that the middlemen from which the "indirect-purchasing retailers" bought were themselves members of the manufacturers' conspiracy — the one factor that caused the court of appeals to state that plaintiffs may be able to recover in this case despite *Illinois Brick*. Undoubtedly, petitioners' failure to list this essential factor in the Question Presented results from the unanimity of court decisions (cited in the next part of this brief) permitting recovery in this situation. Thus, petitioners have larded the Question Presented with their quintet of extraneous conditions or qualifiers that had no significance to the reasoning of the court of appeals, and petitioners argue that these factors make this case worthy of review. But the court of appeals' decision did not turn on any of these factors, making review of them here inappropriate.

For example, petitioners say that the court of appeals made a "finding" that any recovery by plaintiffs as direct purchasers from the wholesaler co-conspirators would require a tracing and apportionment of overcharges to each tier in the chain of sale — the "famously difficult" type of "incidence analysis" that *Illinois Brick* sought to avoid. Pet. at 16-17; *see id.* at 11-12. But the court of appeals "found" no such thing. The court said that this litigation involves passed-on overcharges and a need for incidence analysis only in the context of explaining why *Illinois Brick* would bar plaintiffs' recovery if the wholesalers *are not* co-conspirators. *See* App. 7-9a. The court did not discuss how damages would be measured if the wholesalers *are* proven to be co-conspirators, but the question is not novel: as co-conspirators, the wholesalers and manufacturers would be jointly and severally liable for all damages caused by all conspirators, without a right of contribution (*Texas Industries, Inc. v. Radcliff Materials, Inc.*, 451 U.S. 630 (1981)). Plaintiffs could recover the full amount of the overcharges imposed *directly* by any co-

conspirator (including any of the wholesalers or manufacturers). No incidence analysis would be needed.

Petitioners also say that the court of appeals made a "finding" that both the wholesalers and the plaintiffs could recover damages in this case, thus permitting a "double recovery" against the manufacturers. Pet. at 17; *see id.* at 12, 22-23. But the court said simply that the summary judgment in the wholesalers' favor should be reversed even though *Illinois Brick* "entitle[d]" the wholesalers to sue the manufacturers as direct purchasers from them, "sow[ing] dishonor among thieves." App. 27a. The court pointedly added that the wholesalers nevertheless may *be* thieves. *Id.* In other words, the conspirators cannot immunize themselves from antitrust liability by suing each other or, as in this case, paying each other off through a judgment-sharing agreement or "settlement". There is nothing novel about this conclusion that calls for this Court's review.

Finally, petitioners accuse the court of appeals of creating some sort of new rule that makes plaintiffs' ability to sue dependent on whether the wholesalers settled with the manufacturers, and petitioners say that conditioning the applicability of an *Illinois Brick* defense on whether the middleman settled with the manufacturers conflicts with the D.C. Circuit's decision in *Adams v. Pan American World Airways, Inc.*, 828 F.2d 24 (1987), *cert. denied*, 485 U.S. 934 & 961 (1988). Pet. at 12-13, 20-22. But, again, the court of appeals did nothing resembling petitioners' accusation. The court made a passing reference to the wholesalers' release of the manufacturers only in connection with its explanation of how, if the wholesalers were *not* co-conspirators and settlement had not occurred, the case would present (in the court of appeals' view) a classic need for incidence analysis, demonstrating that *Illinois Brick* should bar plaintiffs' claims. App. 9a.

Indeed, the court of appeals held that plaintiffs' claims would be barred under *Illinois Brick* if the wholesalers were not co-conspirators, despite the fact that the wholesalers had settled with the manufacturers. *Id.* Thus, contrary to petitioners' argu-

ment, the court's ruling was not in conflict with cases holding that settlement has no bearing on application of *Illinois Brick*. Nor does the wholesalers' "settlement" with the manufacturers preclude the plaintiffs from recovering against both the wholesalers and the manufacturers if the wholesalers *are* co-conspirators. App. 6a-7a. The "settlement" is simply irrelevant, just as it was in *Adams*.

In short, the question on which the petitioners seek a writ of certiorari is not raised in the court of appeals' decision and does not exist in this case.

II. COURTS HAVE UNIFORMLY HELD THAT ANTITRUST PLAINTIFFS MAY RECOVER FOR PURCHASES MADE THROUGH CO-CONSPIRATOR MIDDLEMEN.

At the outset of the court of appeals' opinion, Chief Judge Posner observed that if the wholesalers are proven to be conspirators, then plaintiffs purchasing from them are *direct* purchasers from the conspirators and "any indirect purchaser defense would go by the board." App. 6a. This conclusion is indisputable.

Illinois Brick was concerned with whether plaintiffs who seek to recover passed-on overcharges with respect to products bought through *non-conspirator* middlemen should be permitted to sue the suppliers who imposed the overcharges on the middlemen. In holding that plaintiffs may not recover in such circumstances, this Court created what defendants, among others, insist on calling the "indirect purchaser doctrine" — a rule that those who do not purchase directly from a conspirator may not recover the overcharges. It necessarily follows that those who *do* purchase directly from a conspirator *may* recover the overcharges.

Nothing in *Illinois Brick* suggests anything to the contrary. The facts that, as here, the members of the conspiracy include both manufacturers and wholesalers, and that some of the plaintiffs' purchases are made from the wholesalers, make no difference under this analysis. As co-conspirators, the

wholesalers and manufacturers are jointly and severally liable for the overcharges on the sales *by every member of the cartel*. This result does not mean that there is a "new exception" to *Illinois Brick*; it means that there is no bar to suit under the rule of *Illinois Brick* itself because the plaintiffs did not purchase through a non-conspirator intermediary.

Petitioners cite no case that is inconsistent with this result. In fact, whether or not they label the result an "exception," every court to consider the issue has held that *Illinois Brick* does not bar recovery by plaintiffs who purchase from intermediaries that participated in the conspiracy. *See Arizona v. Shamrock Foods Co.*, 729 F.2d 1208, 1212-13 (9th Cir. 1984), *cert. denied*, 469 U.S. 1197 (1985); *Fontana Aviation, Inc. v. Cessna Aircraft Co.*, 617 F.2d 478, 481 (7th Cir. 1980); *Rozema v. Marshfield Clinic*, 977 F. Supp. 1362, 1375 (W.D. Wis. 1997); *Dee-K Enterprises, Inc. v. Heveafil Sdn. Bhd.*, 1997 U.S. Dist. LEXIS 16733 (E.D. Va., Oct. 23, 1997); *In re Mid-Atlantic Toyota Antitrust Litigation*, 516 F. Supp. 1287, 1295-96 (D. Md. 1981); *Abrams v. Interco Inc.*, 1980-2 Trade Cas. (CCH) ¶ 63,292, at 75,552 (S.D.N.Y. 1980); *Reiter v. Sonotone Corp.*, 486 F. Supp. 115, 119-20 (D. Minn. 1980); *Vermont v. Densmore Brick Co.*, 1980-2 Trade Cas. (CCH) ¶ 63,347, at 75,778 (D. Vt. 1980); *Florida Power Corp. v. Granlund*, 78 F.R.D. 441, 443-44 (M.D. Fla. 1978); *In re Anthracite Coal Antitrust Litigation*, 1978-1 Trade Cas. (CCH) ¶ 62,059, at 74,587 (M.D. Pa. 1978); *Gas-A-Tron of Arizona v. American Oil Co.*, 1977-2 Trade Cas. (CCH) ¶ 61,789, at 73,245 (D. Ariz. 1977). *See also In re Beef Industry Antitrust Litigation*, 600 F.2d 1148, 1163 (5th Cir. 1979), *cert. denied*, 449 U.S. 905 (1980); *McCarthy v. Recordex Service, Inc.*, 80 F.3d 842, 854 (3d Cir.), *cert. denied*, 117 S. Ct. 86 (1996); *Link v. Mercedes-Benz of North America, Inc.*, 788 F.2d 918, 931 (3d Cir. 1986); *In re Midwest Milk Monopolization Litigation*, 730 F.2d 528, 529-532 (8th Cir.), *cert. denied*, 469 U.S. 924 (1984); *In re Cement & Concrete Antitrust Litigation*, 1978-1 Trade Cas. (CCH) ¶ 62,069 (D. Ariz. 1978); 1 ABA Section of Antitrust Law, ANTITRUST LAW DEVELOPMENTS 774-75 (4th ed. 1997); 2 Phillip E. Areeda & Herbert Hovenkamp, ANTITRUST LAW ¶ 371h at 264-65 (rev. ed. 1995). If this weren't

the law, there never could be recovery in vertical conspiracy cases.[3]

In addition to being unassailable, the conclusion that plaintiffs may pursue overcharges from co-conspirator middlemen is also not ripe for review. As Chief Judge Posner pointed out, how this issue plays out depends on the outcome at trial. If the jury concludes that the wholesalers are not co-conspirators, the issue will disappear because plaintiffs will be indirect purchasers from the manufacturer conspirators and unable to recover under the holding of the court of appeals. Only if the jury concludes that the wholesalers are indeed co-conspirators will plaintiffs' ability to recover as direct purchasers become relevant. If the issue still exists at that time and petitioners still

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3. Petitioners' efforts to distinguish these cases are unavailing. For example, petitioners say the consumer plaintiffs in *Arizona v. Shamrock* avoided an *Illinois Brick* bar on claims against wholesalers only because they changed their theory to claim a conspiracy by retailers to fix retail prices (Pet. at 19), but in fact the court in *Shamrock* held that *Illinois Brick* did not bar the consumers' two-tier conspiracy claim against wholesalers *and* retailers because their purchases were made from retailers as co-conspirators (729 F.2d at 1211-14). Petitioners say the *Fontana* case turned on the specific nature of the conspiracy and damages at issue there (Pet. at 19), but the court in *Fontana* drew no such distinction, rejecting application of *Illinois Brick* "in circumstances where the manufacturer and the intermediary are both alleged to be co-conspirators in a common illegal enterprise resulting in intended injury to the buyer" (617 F.2d at 481). Petitioners also quote a statement in *Sports Racing Services, Inc. v. Sports Car Club of America, Inc.*, 131 F.3d 874, 889 (10th Cir. 1997), that secondary purchasers' claims are barred under *Illinois Brick* because the middleman may bring suit. Pet. at 19 n.14, 23. But petitioners ignore the Tenth Circuit's further comment, made as part of its discussion of who may bring vertical conspiracy claims, that the proper plaintiff is "the first 'innocent' purchaser in the chain of distribution — the direct victim of the anticompetitive activity . . . ." 131 F.3d at 889. That "first innocent purchaser" analysis is fully in accord with the cases permitting recovery by direct purchasers from middlemen co-conspirators. In this litigation, the plaintiffs are the first innocent purchasers.

wish to dispute it, they can raise it again in the court of appeals and, upon losing there, can seek review by this Court. Until then, however, the question is abstract and premature, and this Court should not spend time considering it.

CONCLUSION

The petition is based on a contrived characterization of the opinion below. The court of appeals' decision does not raise the issues petitioners seek to present to this Court, and the court of appeals' conclusion that antitrust plaintiffs may recover for purchases made through co-conspirator middlemen comports with the unanimous view of every court that has considered the issue. The petition for a writ of certiorari should be denied.

Respectfully submitted,

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IN THE

Supreme Court of the United States

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IN RE: BRAND NAME PRESCRIPTION DRUGS ANTITRUST LITIGATION,

ABBOTT LABORATORIES, et al.,

Petitioners,

v.

HJB, INC., et al.,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

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QUESTION PRESENTED

The question presented in the petition for a writ of certiorari is not an accurate or fair statement of the issue involved in this case. The proper statement of the question presented is as follows:

> Where manufacturers and wholesalers enter into an industry-wide price-fixing conspiracy to overcharge retailers on all of their purchases of prescription drugs—including both drugs purchased directly from the manufacturers and drugs purchased from co-conspirator wholesalers—does the rule in *Illinois Brick Co. v. Illinois*, 431 U.S. 720 (1977), preclude the retailers from recovery of overcharges on purchases made from the co-conspirator wholesalers?

RULE 29.6 STATEMENT

This Brief in Opposition is filed on behalf of several companies, all of which are named plaintiffs and class representatives in the class action pending in the district court. Pursuant to Rule 29.6 of the Rules of the Supreme Court of the United States, Class Plaintiff Respondents state:

a. This Brief in Opposition is filed on behalf of the following corporations:

Endlers' Pharmacy, Inc.

Barry's Cut Rate Stores, Inc.

Brady's Pharmacy, Inc.

Brady's Enterprises, Inc.

Conney's Pharmacy, Inc.

Meyers Pharmacy, Inc.

Strathmore Pharmacy, Inc.

Pat-Y-Ken Drug, Inc.

Starko, Inc.

Lurie Pharmacy, Inc.

b. None of the corporations listed in paragraph (a) of this Statement has a parent company.

c. None of the corporations listed in paragraph (a) of this Statement has any nonwholly owned subsidiaries.

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STATEMENT OF THE CASE

This is a class action brought on behalf of retail pharmacies throughout the United States alleging that most of the major drug manufacturers and the major drug wholesalers entered into an industry-wide conspiracy, in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, to fix, raise, maintain and stabilize the prices that retail pharmacies in this country pay for brand name prescription drugs.[1] Among other things, the complaint seeks to recover the unlawful overcharges that have been imposed upon the retail pharmacies by the conspiracy.[2] Jurisdiction of the district court was properly invoked under, *inter alia*, 28 U.S.C. § 1331.

After discovery was completed, both the manufacturers and the wholesalers filed motions for summary judgment, claiming that there was no evidence that a conspiracy operated in this industry; that even if a conspiracy could be shown to exist, there was no evidence to implicate the wholesalers in that conspiracy; and that, in any event, the rule in *Illinois Brick Co. v. Illinois,* 431 U.S. 720 (1977), bars recovery on all sales made through

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[1] This petition was filed by several of the manufacturer defendants. Several other manufacturer defendants have already settled with the class. A companion petition for a writ of certiorari has been filed by the wholesalers, and is currently pending under the caption *AmeriSource Corporation v. HJB, Inc.*, No. 97-1148.

[2] On November 15, 1994, the Plaintiffs' claims were certified for treatment as a class action, with a plaintiff class including more than 40,000 retail pharmacies. Several thousand pharmacies opted out of the class and filed separate lawsuits, which were then consolidated with the class case for pretrial proceedings. This Brief in Opposition is filed on behalf of certain Class Plaintiffs.

the wholesalers. In response, Class Plaintiffs submitted evidence showing that the conspiracy in this case was designed to enable the manufacturers and wholesalers to charge supra-competitive prices to retail pharmacies, while keeping wholesalers involved in sales to retail pharmacies. The evidence showed that the conspiracy involved at least the following:

> (1) Defendants entered into a conspiracy to prevent retail pharmacies from purchasing brand name prescription drugs at discounts off the list prices for those drugs—a conspiracy that involved, first, an agreement among the wholesalers to oppose such discounts to retail pharmacies, second, an agreement among the manufacturers not to offer such discounts, and third, an agreement among the manufacturers and the wholesalers to set up an industry-wide system to facilitate the structure of differential pricing necessary to prevent such discounts;
>
> (2) Defendants (both the manufacturers and the wholesalers acting together) conspired to develop and maintain a chargeback system for the explicit purpose of preventing the re-sale of drugs between and among retailers and other drug purchasers and thus assuring that retail pharmacies would not be able to get discounts off list prices on brand name prescription drugs from any source other than the co-conspirator manufacturers and wholesalers;
>
> (3) Defendants (principally the manufacturers but with the knowledge and encouragement of the wholesalers) conspired to increase the prices paid by retail pharmacies for brand name prescription drugs by entering into an unlawful agreement among themselves to raise the prices

of such drugs on the basis of increases in the consumer price index; and

(4) Defendants conspired to make certain that the full burden of these increases in the prices of brand name prescription drugs would fall upon retail pharmacies through an agreement among the manufacturers and the wholesalers that the manufacturers would notify wholesalers of such increases in advance so that the wholesalers could raise their prices before the retail pharmacies knew of the intended price increases and through a further agreement among the wholesalers to coordinate their own price increases so as to avoid competition among themselves.

On April 4, 1996, the district court held that there was ample evidence of the existence of a price-fixing conspiracy and denied the remaining summary judgment motions filed by the manufacturers.[3] However, the court granted the motions for summary judgment filed by drug wholesalers largely on the ground that they acted under the coercion of the drug manufacturers and hence were not voluntary participants in the conspiracy. On the same line of reasoning, the district court also ruled that although *Illinois Brick Co. v. Illinois,* 431 U.S. 720 (1977), ordinarily would limit the plaintiffs' damages to the unlawful overcharges on their purchases made from the manufacturers, the manufacturers exercised so much control over the wholesalers in this case

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[3] In early 1996, the district court granted the summary judgment motion filed by one of the manufacturers, The DuPont Merck Pharmaceutical Company. That ruling was later reversed by the court of appeals. That ruling is not involved in this petition.

that the "owned or controlled" exception to the *Illinois Brick* rule would apply.[4]

At the manufacturers' request, the district court certified its *Illinois Brick* ruling for an interlocutory appeal under 28 U.S.C. §1292, and the court of appeals allowed the manufacturers to appeal that ruling immediately. The district court also made a certification under Rule 54(b) of the Federal Rules of Civil Procedure regarding its dismissal of the claims against the wholesalers, and the retail pharmacies appealed that ruling.[5]

In an opinion dated August 15, 1997, the court of appeals reversed both of the district court's decisions, holding that the power exercised by the drug manufacturers over the drug wholesalers did not bring the situation within the "owned or controlled" exception to *Illinois Brick*, but also holding that this power did not insulate the drug wholesalers from liability for their participation in the conspiracy.[6] *In re Brand Name Prescription Drugs Antitrust Litigation,* 123 F.3d 599 (7th Cir. 1997). The court of appeals held that the evidence presented created a triable issue of fact regarding whether the wholesalers were members of the conspiracy and that the *Illinois Brick* rule would not apply if the jury found that the wholesalers were co-conspirators, for in that

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[4] A copy of the opinion from the district court is included in the Appendix to Petition for a Writ of Certiorari, filed by petitioners on January 6, 1998, at pp. 45a-101a.

[5] The district court's denial of the manufacturers' motions for summary judgment was not appealed.

[6] Two other decisions from the district court were reviewed in that August 15 opinion, including the ruling on DuPont Merck's summary judgment motion, referred to in footnote 3, above. Neither decision is relevant to this petition.

event, the plaintiffs would have purchased directly from the conspiracy.[7] *Id.* at 604, 614.

The case was remanded to the district court, and a jury trial is scheduled for September, 1998. On January 6, 1998, the manufacturers filed this petition.

REASONS FOR DENYING THE WRIT

1. The petition should be denied because it seeks review of an interlocutory ruling that is not appropriate for review by this Court at this time.

This petition for a writ of certiorari seeks to raise a question that is not remotely appropriate for consideration by this Court at this stage of this litigation. The court of appeals' ruling was that *Illinois Brick* will not bar recovery of overcharges paid on purchases from wholesalers if, and only if, those wholesalers are found to have participated in a conspiracy with the manufacturers to fix prices. 123 F.3d at 604. As of yet, there has been no determination that the wholesaler did in fact participate in the conspiracy. Indeed, as of yet, there has been no determination that a conspiracy exists, even among the manufacturers. Both of those issues remain to be resolved at the jury trial that begins in September. Hence the question sought to be presented in the petition is purely hypothetical. Only if the jury finds that there is a conspiracy and that the wholesalers partici-

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[7] Although the question certified was narrow, the entire *Illinois Brick* issue was necessarily before the court, because an appeal certified under 28 U.S.C. § 1292 brings before the court of appeals any issue that is fairly included within the district court order that raises the certified question. *Yamaha Motor Corp. v. Calhoun,* 516 U.S. 199 (1996).

pated in that conspiracy, and only if a judgment is entered on that verdict and affirmed on appeal, will the question of the applicability of *Illinois Brick* be presented.

This Court's usual practice is to decline to review interlocutory decisions. See, e.g., *Virginia Military Institute v. United States,* 508 U.S. 946 (1983) (Scalia, J., concurring); *Brotherhood of Locomotive Firemen v. Bangor & Aroostock Railroad Co.,* 389 U.S. 327, 328 (1967) (per curiam); *Hamilton-Brown Shoe Co. v. Wolf Bros. & Co.,* 240 U.S. 251, 258 (1916); and *American Constr. Co. v. Jacksonville, Tampa & Key West Ry.,* 148 U.S. 372, 384 (1893). Petitioners have not set forth any reason for departure from this usual practice. The petition does not suggest that any emergency exists, nor does it identify any practical need for interlocutory review. Indeed, the petition does not directly mention the issue of the timing of the review. The only portion of the petition that relates to the timing issue is the suggestion that the court of appeals' decision "will open the floodgates to indirect-purchaser litigation" (Petition at 24). As is shown below, that argument is so plainly overdrawn and so wholly lacking in substance that it does not remotely provide a basis for departure from the Court's usual practice.

2. The petition should be denied because the decision of the court of appeals is consistent with well-established principles of antitrust law and does not conflict with the decision of any other Circuit or this Court.

The court of appeals' decision rests upon a well-established principle of antitrust law—that is, that all of the

participants in a price-fixing conspiracy are jointly and severally liable for all of the damages caused by the conspiracy. See *Texas Industries, Inc. v. Radcliff Materials, Inc.*, 451 U.S. 630, 646 (1981); *Atlanta v. Chattanooga Foundry & Pipeworks*, 127 F. 23, 26 (6th Cir. 1903), *aff'd*, 203 U.S. 390 (1906). By virtue of that principle, all of the co-conspirators are liable not only for overcharges exacted in their own prices for drugs directly sold to retailers but also for overcharges exacted by other direct-selling participants in the conspiracy. No *Illinois Brick* problem exists because all the purchases in question were made directly from participants in the conspiracy. That is precisely what the court of appeals held and that is all that it held (123 F.3d at 604-05):

> "The indirect-purchaser issue (with which we begin) is separate from the issue of the wholesalers' participation in the manufacturers' alleged conspiracy. It is true that if we reversed the judge's ruling on the latter issue and so reinstated the wholesalers as defendants, and if the plaintiffs went on to obtain a judgment against the wholesalers and manufacturers, any indirect-purchaser defense would go by the board, since the pharmacies would then be direct purchasers from the conspirators. *Fontana Aviation, Inc. v. Cessna Aircraft Co.*, 617 F.2d 478, 481 (7th Cir. 1980); *Arizona v. Shamrock Foods Co.*, 729 F.2d 1208, 1212-13 (9th Cir. 1984); *see also In re Beef Industry Antitrust Litigation*, 600 F.2d 1148, 1163 (5th Cir. 1979) (requiring that the direct sellers, here the wholesalers, be joined as defendants—but that requirement is satisfied)."

Although petitioners strive mightily to create the impression that this holding is novel and creates some kind of new exception to *Illinois Brick* (Petition at 14-

18), the fact is that the court of appeals' decision is part of an unbroken line of precedent extending back to the first cases that considered the issue following this Court's decision in *Illinois Brick*. As the court of appeals' decision reflects, both the Seventh Circuit and the Ninth Circuit had previously adopted the view that *Illinois Brick* does not apply where the middleman involved is a participant in the price-fixing conspiracy. *Fontana Aviation, Inc. v. Cessna Aircraft Co.*, 617 F.2d 478, 481 (7th Cir. 1980); *Arizona v. Shamrock Foods Co.*, 729 F.2d 1208, 1211-12 (9th Cir. 1984).[8] Numerous district courts have reached the same conclusion.[9] So far as Re-

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[8] This holding also appears in *In re Coordinated Proceedings in Petroleum Products Antitrust Litigation*, 497 F. Supp. 218, 228 (C.D. Cal. 1980), *aff'd*, 691 F.2d 1335, 1341-42 (9th Cir. 1982), where the court held that if the co-conspiring middlemen are joined as defendants, *Illinois Brick* will not bar a plaintiff's claim "that the defendant oil companies conspired with retail dealers to set prices at the retail level." Several other courts of appeals that have faced the question have declined to decide it, most often by rejecting a plaintiff's claim because the plaintiff has not joined the allegedly co-conspiring middlemen as defendants in the lawsuit. See *In re Beef Industry Antitrust Litigation*, 600 F.2d 1148, 1163 (5th Cir. 1979); *Jewish Hospital Association of Louisville v. Stewart Mechanical Enterprises, Inc.*, 628 F.2d 971, 977 (6th Cir. 1980); *In re Midwest Milk Monopolization Litigation*, 730 F.2d 528, 532 (8th Cir. 1984); *Link v. Mercedes-Benz of North America, Inc.*, 788 F.2d 918, 933 (3d Cir. 1986); *McCarthy v. Recordex Service, Inc.*, 80 F.3d 842, 854-55 (3d Cir. 1996); and *Austin v. Blue Cross & Blue Shield of Alabama*, 903 F.2d 1385, 1392 (11th Cir. 1990). That mandatory joinder rule has no application to this case, because the plaintiff retailers have sued both manufacturers and wholesalers.

[9] See, e.g., *Gas-A-Tron of Arizona v. American Oil Co.*, 1977-2 Trade Cases (CCH) ¶ 61,789 (D. Ariz. 1977); *Florida Power Corp. v. Granlund*, 78 F.R.D. 441 (M.D. Fla. 1978); *In re*

(continued...)

spondents are aware, no court has held otherwise. Certainly, petitioners have cited no such holding.

The opinions from these courts are fully consistent with the view expressed by the leading commentators. For example, Professors Areeda and Hovenkamp have explained the reasons why the *Illinois Brick* rule should not apply when the conspiracy also includes the middlemen, using terms very similar to those used by the court of appeals. Phillip E. Areeda & Herbert Hovenkamp, *Antitrust Law: An Analysis of Antitrust Principles and Their Application,* ¶ 337.2e (1993 Supplement).

Petitioners' whole argument comes down to an effort to convince the Court that the court of appeals' decision is somehow inconsistent with the reasoning of *Illinois Brick*. Even here, petitioners do not identify any language in *Illinois Brick* that is inconsistent with the court of appeals' decision. Instead, they attempt to create such inconsistency by repeatedly mischaracterizing that decision. Thus petitioners argue that the court of appeals' decision contains a ruling that both direct

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[9] (...continued)
Cement and Concrete Antitrust Litigation, 1978-1 Trade Cases (CCH) ¶ 62,069 (D. Ariz. 1978); *In re Anthracite Coal Antitrust Litigation,* 1978-1 Trade Cases (CCH) ¶ 62,059 (M.D. Pa. 1978); *Reiter v. Sonotone Corp.,* 486 F. Supp. 115 (D. Minn. 1980); *Vermont v. Densmore Brick Co.,* 1980-1 Trade Cases (CCH) ¶ 63,347 (D. Vt. 1980); *Abrams v. Interco., Inc.,* 1980-2 Trade Cases (CCH) ¶ 63,292 (S.D.N.Y. 1980); *In re Mid-Atlantic Toyota Antitrust Litigation,* 516 F. Supp. 1287 (D. Md. 1981); *In re New Mexico Natural Gas Antitrust Litigation,* 1982-1 Trade Cases (CCH) ¶ 64,685 (D. N.M. 1982); *Mekani v. Miller Brewing Co.,* 93 F.R.D. 506 (E.D. Mich. 1982); *New York v. Dairylea Cooperative, Inc.,* 570 F. Supp. 1213 (S.D.N.Y. 1983); and *Whitlock v. Under Sea Industries, Inc.,* 1984-1 Trade Cases (CCH) ¶ 65,847 (C.D. Cal. 1984).

and indirect purchasers may sue to recover the same overcharge (Petition at 14, 18-19, 22 and 23), that the decision necessarily rests on a pass-on of overcharges in violation of *Illinois Brick* (Petition at 3, 7, 11-12, 14, 16-17, 20 and 27), and that the decision somehow makes the retailers' right to recovery contingent on whether there was a settlement between the manufacturers and the wholesalers (Petition at 4, 13-14 and 20-21). None of these characterizations are accurate. And most importantly, none of the petitioners' arguments even attempt to come to grips with the court of appeals' holding that all participants in a price-fixing conspiracy are directly liable for all overcharges imposed by all the members of that conspiracy.

CONCLUSION

For the foregoing reasons, the Class Plaintiff Respondents respectfully request that this Court deny the request for a writ of certiorari.

February 11, 1998

Respectfully submitted,

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